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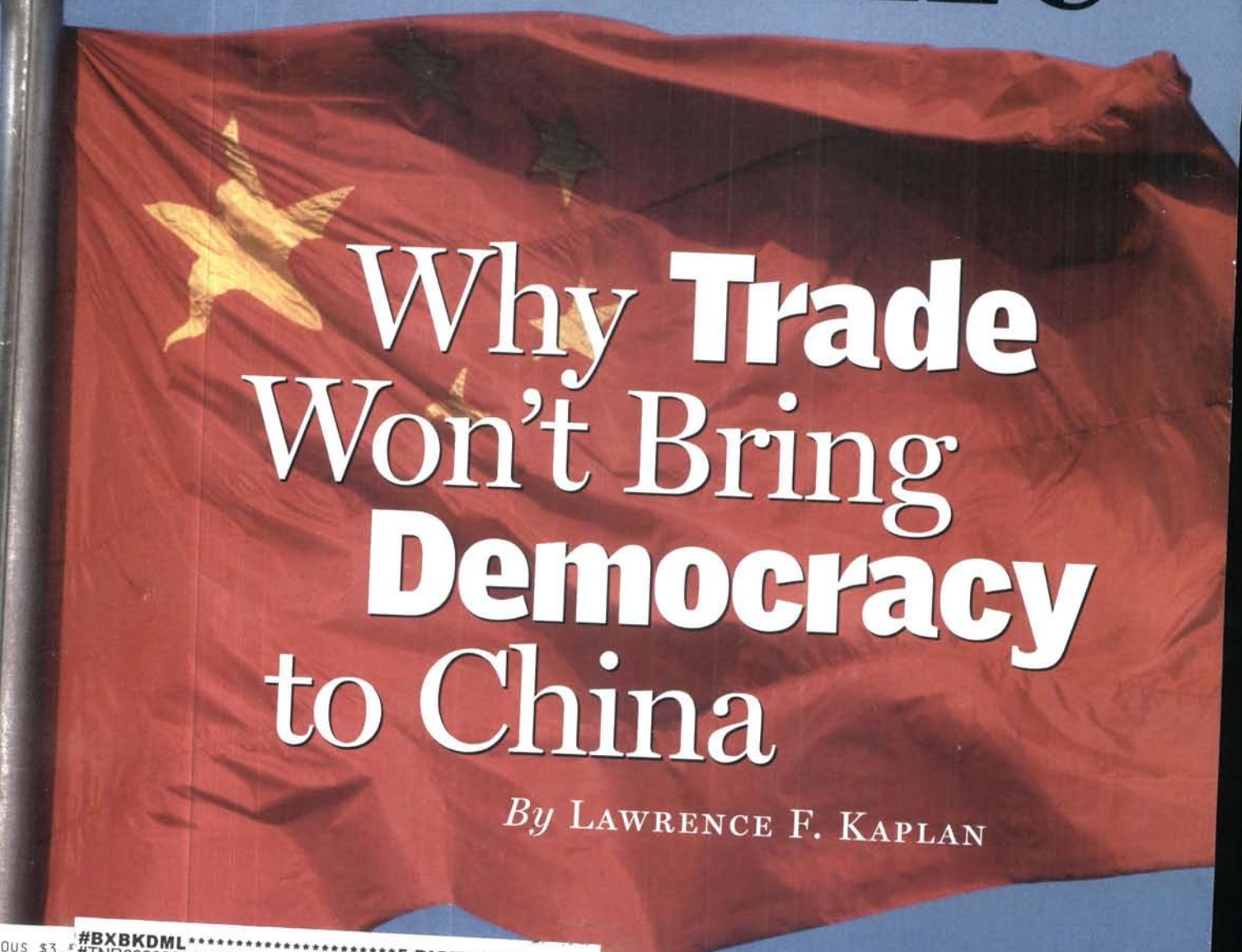
THE

# NEW REPUBLIC

The Bush Scandals Begin
RYAN LIZZA

HMO Reform, a Beginning
THE EDITORS

ULY 9 & 16, 2001



# Why Trade Won't Bring Democracy to China

By LAWRENCE F. KAPLAN

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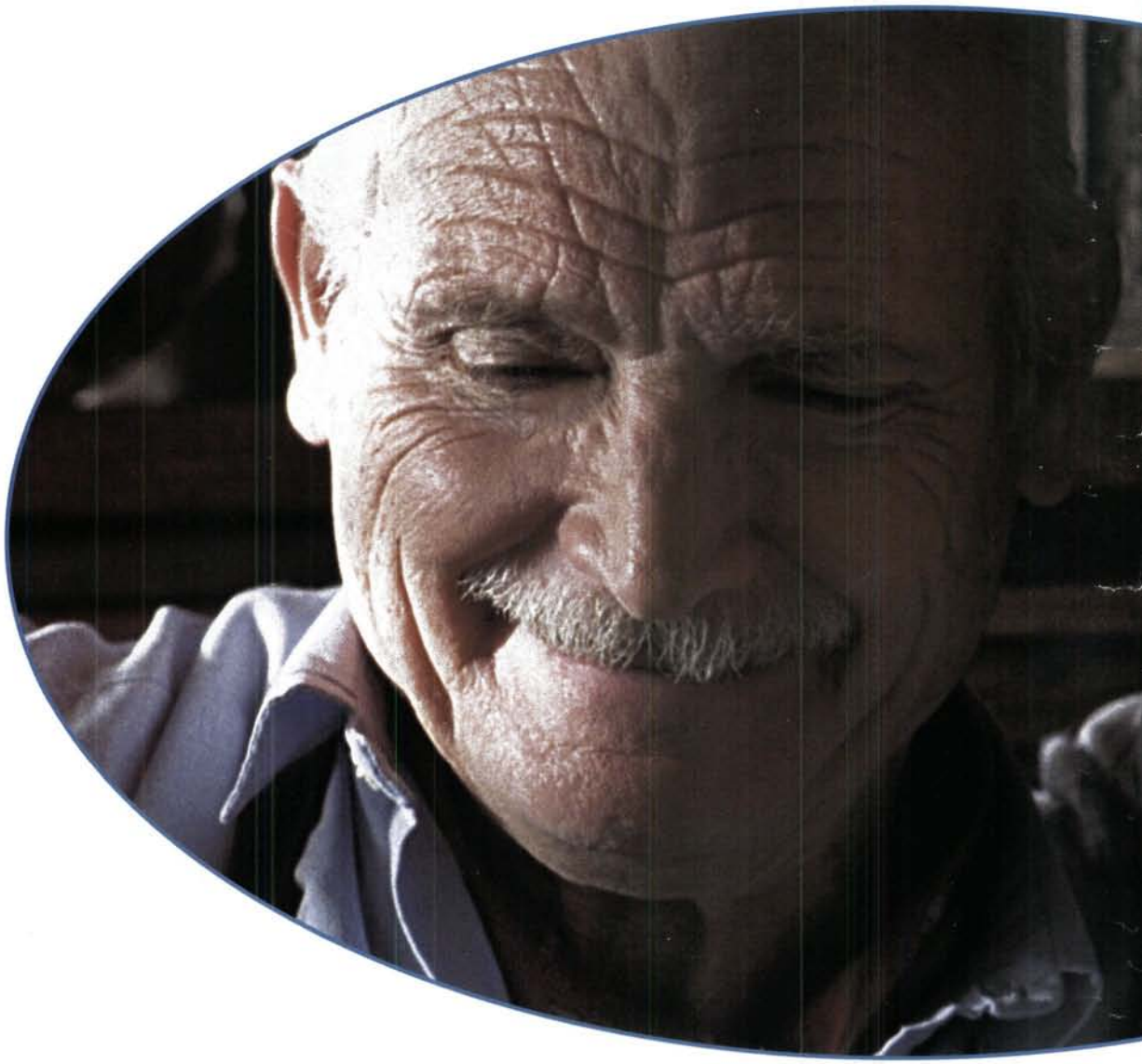
Because our fathers have Alzheimer's, too.



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*A Journal of Politics and the Arts*

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# CORRESPONDENCE

## Power politics

TO THE EDITORS:

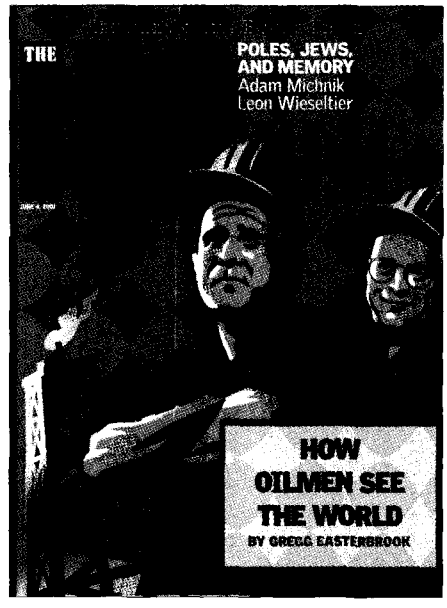
Gregg Easterbrook's examination of the oilmen in the White House was very insightful except for one point ("The Producers," June 4). California's deregulation scheme was *not* "spectacularly wrongheaded," as he and others portray it. California led the nation in a bold experiment; like all such experiments, this one had unexpected consequences. According to free-market theory, competition was supposed to lower prices, not increase them tenfold. Skyrocketing prices should have encouraged production, not caused small producers to shut down and large producers to withhold capacity.

The key to successful experimentation is in the follow-up. As the Founding Fathers recognized the need to replace the Articles of Confederation, current government authorities need to restructure deregulation to correct the now-obvious flaws. The spectacular wrongheadedness comes from the oilmen in the White House. Their refusal to impose reasonable, short-term price caps, among other things, reveals their simplistic interpretation of market theory. Their decree—if the people have no reliable electricity, let them have more pollution and wilderness drilling—is one of the worst examples of Marie Antoinette-ism since, well, Marie Antoinette.

DUANE WEISENHAUS
*Los Angeles, California*

TO THE EDITORS:

Gregg Easterbrook's interesting article contains two significant factual problems that greatly understate the degree of progress that has been made in our energy situation in the past two decades. First, he says that "electricity per kilowatt-hour costs an average of 20 percent less today than it did 20 years ago." In fact, based on figures from the Department of Energy's *Monthly Energy Review*, the price of residential electricity, adjusted for inflation, has fallen 27 percent since 1980 (and 34 percent since 1983). For all electricity, the comparable




figures are 32 percent and 39 percent.

Second, with respect to increased efficiency in the use of energy, Easterbrook states—correctly, though rather oddly—that use of energy per dollar of GDP had "declined from about 1975 to about 1995 (roughly when the SUV craze started)." However, again from DOE reports, energy use per dollar of GDP fell another 12 percent in the period 1995–2000, a greater amount than in three of the four previous five-year periods. Thus, 1995 was not a magic date when the efficiency increase stopped, nor did it apparently have anything to do with SUVs.

DANNY J. BOGGS
*Former Deputy Secretary*
*United States Department of Energy*
*Louisville, Kentucky*

## Material losses

TO THE EDITORS:

Peter Beinart's proposal to accelerate textile and apparel trade liberalization ("Clothesline," June 4) might help Africa's poor if Africa were alone in depending for growth on selling such products to the United States—or if the U.S. market were infinitely expandable. But neither condition holds. Recent U.S. trade agreements with Third World textile and apparel exporters have simply robbed Peter to pay Paul. This indiscriminate market opening has also robbed U.S. trade policy of any economic or strategic focus.

NAFTA gave critical trade privileges to Mexico's burgeoning textile and apparel industries—largely because Mexico was a major foreign policy challenge. But NAFTA negated similar privileges extended to Caribbean basin textile and apparel products in the mid-'80s, when that region was a top priority. After the Caribbean complaints, Congress in 2000 restored these trade privileges—but thereby offset Mexico's. Meanwhile, after the 1997 financial crisis, U.S. markets were kept open to textile and apparel exports from Asia—yet another top-priority region. Aided by depressed currencies, Asian exports, including China's, have sharply limited Latin America's trade gains, even during the United States' economic boom. In 2000 Africa was thrown into the mix because it, too, had become a priority along with Vietnam, Jordan, and others.

Now U.S. growth is slowing. Moreover, Washington has agreed to eliminate most textile and apparel trade barriers by 2005. Not only will the United States lose most of its ability to extend preferences to any region; all Third World producers will be swamped by competition from China, which, according to industry sources, features the world's largest apparel-production overhang and its lowest production costs.

Helping Africa's poor is an admirable goal. But achieving it will require genuinely serious thought about U.S. and world trade patterns.

ALAN TONELSON
*Research Fellow*
*U.S. Business and Industry Council Educational Foundation*
*Washington, D.C.*

## Six degrees

TO THE EDITORS:

Your readers might be interested in a few facts omitted from your critical editorial on the Yale faculty's protest against the university's award of an honorary degree to George W. Bush (Notebook, June 4). Four of the last six presidents have graduated from Yale: Gerald Ford, who received an honorary degree after he left the White House in 1977; George H.W. Bush, who received one in 1991, his third year in office; and Bill Clinton, who has not yet received an honorary degree.

If the Yale Corporation followed a consistent practice, it would not have occurred to me to protest its recent decision. Indeed, I was perfectly happy with its award to the previous President Bush, supposing that Yale did follow such a practice. But it is clear that Yale is not simply honoring the presidency but making an assessment of particular presidents. Otherwise it would have invited Clinton to share the stage with the current President Bush. Within this

*continued on page 49*

The editors welcome correspondence from readers. Please address letters to Correspondence, TNR, 1220 19th Street NW, Washington, D.C. 20036 (letters may also be sent electronically to tnr@aol.com). All letters should include the writer's full name, address, and telephone number; be typed double-spaced; and be fewer than 200 words. Letters may be edited for space and clarity. Please do not send letters via fax.



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# Corrosive corruption

All around the world, in every language, corruption has a name. Baksheesh. Soborno. Dash. Bribe. And everywhere it occurs, it is corrosive.

Corruption can take many forms, and the effects can accumulate. Where government officials seek special favors or bribes, the costs can discourage honest companies and deter needed investments. Scarce public resources are squandered on nonessential, shoddily built, or too-costly projects, while needed investments go begging. Corrupt officials may thwart the growth of more honest and democratic institutions. Public cynicism, contempt and disillusionment can become widespread.

**Companies that participate in corrupted dealings do themselves no favors**

Companies that participate in corrupted dealings also do themselves no favors. Although a business deal here or there may be obtained, the cost includes creating a culture of dishonesty within the company. If cheating or bribery or fixing the books are tolerated for certain purposes, a company can never again be sure that these dealings are not tolerated for others. The whole organization can come to believe that dishonesty is an accepted approach. That's one reason ExxonMobil maintains strong and clear policies to guard against such dishonesty.

The United States has long been in the forefront of a laudable effort to reduce corruption, and its Foreign Corrupt Practices Act has contributed positively to discouraging extortion and bribery around the world. In 1999, the OECD Convention on Combating Bribery of Foreign Public Officials went into effect. Almost all of the OECD countries have now ratified the convention and enacted enabling legislation. This convention holds great promise for reducing corruption, as long as the signatory nations live up to their enforcement obligations.

And some private-sector groups, such as the International Association of Oil & Gas Producers, are helping to meet the OECD standards.

The Organization of American States has also obtained ratification of an Inter-American Convention Against Corruption by most of its member countries. The U.S. ratified the Convention on September 29 of last year.

Also encouraging are steps by international financial institutions such as the World Bank, the International Monetary Fund and the Asian Development Bank to focus more on reducing corruption in the developing world. Innovative arrangements such as the revenue management plan for oil revenues established by the government of Chad and the World Bank are path-breaking advances.

Central to the anti-corruption drive has been the work of the nongovernmental organization Transparency International. Its advisory group of important business and government leaders has included Olusegun Obasanjo, president of Nigeria, who has been at the forefront of efforts to reduce official corruption and private-sector bribery.

There is good reason to be optimistic about the growing efforts to combat the most widespread and damaging effects of corruption. But optimism must be tempered by realism and strengthened by determination, because reducing the impact of corruption will remain a long and difficult struggle.

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# TRB

FROM WASHINGTON

## Hooked

THE MINUTIAE OF monkeyfishing, it turns out, are quite riveting. According to Jay Forman's now-famous story in *Slate.com*, it involves attaching mushy kiwifruit to fishing tackle, luring the little simians from their lairs, then catching and releasing them so they don't chase you around your little skiff. The piece recounted how a bunch of rhesus monkeys, acquired for medical research, had run amok on a small island off the Florida Keys and had become both a menace and a juicy target for drunken, sicko fishermen. I have to say I found the original piece—which conjured up images somewhere between Curious George and Mad Max—highly entertaining. I assumed it was probably a tall tale, but it was told so well I didn't really give a damn. And, since it wasn't addressing earthshaking matters like Republican-sponsored tax breaks for shipbuilders or a patients' bill of rights, I wasn't exactly scouring the prose for evidence of malfeasance. It was a jolly piece of colorful and clearly inebriated reminiscence. So what if it was embroidered a little, or even a lot? How many jolly tales aren't livened up a bit in the retelling, especially when the original expedition was conducted with a fair amount of mental lubrication?

Turns out I was wrong. This was a grave and terrible offense. All the usual journalistic pooh-bahs descended from their pedestals to tsk-tsk. Suddenly, spanking the monkey took on a whole new meaning. The story merited a front-page, above-the-fold "exposé" in the business section of *The New York Times* and an apologia from one of the most talented journalists around (and a former writer of this column), Michael Kinsley. Now don't get me wrong. I'm not arguing that magazines or newspapers should publish fibs. Kinsley wouldn't either. (Tedious full disclosure: I revere and like Kinsley, and he helped give me my start in American journalism.) But this absurd non-scandal is a symptom of something now sadly endemic in the culture: the forest/trees issue. Or, to put it another way: Can we please get a sense of perspective?

It's not as if the article was in *The New England Journal of Medicine*. It began with the phrase "Once upon a time." It read jauntily and vividly: "These were not the lovable anthropomorphic orangs of *Dunston Checks In* fame. These were wild, evil-looking, pissed-off screeching beasts. They glared at us from the shore, pacing." Get the picture? The author quietly points out that the fantastic scenario he is asking us to contemplate is not likely to be fact-checkable: "There is no *Saltwater Monkeyfishing* magazine to lay out proper monkeyfishing etiquette. You can't look up the all-tackle record for a rhesus monkey in the *Florida Saltwater Fishing Guide*. It's more of the kind of thing that is weepingly confessed around 4 a.m. underneath the bar at El Loro Verde on Whitehead Street in Key West." Crazy places, those Florida Keys. And craziness was surely the point of the article. Consider this line: "After a long day of eating its own feces, what monkey could resist a tasty orange?" Is the author seriously suggesting that wild monkeys eat their own feces for sustenance? Of course not. The whole piece is written with a wink and a rod.

Once upon a time, to coin a phrase, basic due diligence by editors and a certain trust in authors was how journalism worked. "Too good to check" was a mantra that probably led a few charlatans to cash a few checks, but it also allowed someone like George Orwell to write long first-person essays that were essentially uncheckable. Can you imagine today's nitpickers editing Orwell? "Mr. Blair, that road to Wigan Pier, wouldn't it be better described as a street? Hello? Are you there?"

Still, the monkeyfishing story became a Major Scandal. The "Best of the Web" page of *OpinionJournal.com*, one of *The Wall Street Journal*'s online outlets (usually a terrific visit), got in a few licks against its longtime sparring partner, Kinsley. On Monday the editors gloated for a bit and then went off the deep end. "Kinsley fails to address two points we raised in our June 15 column," they intoned. They cited "the discrepancy between what Kinsley claimed [source] Jack Atwater told [*Slate.com* deputy editor Jack] Shafer and what Atwater told *Inside.com*'s Seth Mnookin about the possibility of building a gun silencer as described in the drunken-gunplay piece, and the disappearance (and subsequent re-appearance) of Kinsley's May 16, 1998, column on TNR hoaxter Stephen Glass from *Slate*'s archives." Please. Is someone going to appoint a journalistic special prosecutor next? This was a piece about trying to fish for monkeys!

The *Journal* isn't alone in picking nits this way. This week THE NEW REPUBLIC takes time out to blast William F. Buckley essentially for reiterating a piece written by someone else and published a few days before in his own magazine. The nerve of it. Yes, the past few have been slow news weeks, and I'm not one to criticize a journalist for scaring up a piece. But TNR's real beef with Buckley is that he's a conservative, just as the *Journal*'s real beef with Kinsley is that he's the smartest liberal writing today. But, rather than be honest and go for the real issue, they try to get them on silly ethical minutiae.

Remind you of anything? This kind of gotcha journalism is mirrored by our current gotcha politics, in which critics are increasingly leery of taking on politicians for deep, real reasons and try to nail them for minor ones instead. Is Michael Portillo gay? Did Karl Rove sell his Intel stock in time? How much did Hillary Clinton pay for her New York office? Did George W. Bush once get busted for DUI? How much did Bill Clinton pay for his haircut on the LAX runway? Did former President Bush really not know what a checkout scanner was? Did Al Gore say he invented the Internet? Did Clarence Thomas rent porn videos? At best, these issues illustrate deeper worries about the people involved. But such worries would be better expressed directly. Let's discuss whether Portillo is too liberal; Rove, too close to corporate America; or the Clintons, deeply corrupt; and so on. These are the real issues and the real scandals. Too often, the mini-distractions are simply ways to wound people for partisan or personal gain.

The same goes for administration nominees. I think New York Senator Charles E. Schumer was on the mark when he argued this week in *The New York Times* that the Democrats should scrutinize Bush's judicial appointees' ideology rather than look for petty little scandals or minor gaffes in their paper trails. Perhaps it's because, as a culture, we have grown so leery of wholesale demonstrations of ideology—everyone's for bipartisanship now—that we often miss the ideological forest for the ethical trees. I'm not saying we should ignore petty instances of corruption. I'm saying they have become the central way we debate our differences. This doesn't merely trivialize our politics. It robs it of real meaning.

By the way, two weeks ago in this column, I wrote that Portillo's father was Portuguese, although he was actually Spanish. Luckily for me, the journalism police have been too busy to notice. But, nonetheless, I apologize. No word yet on whether Portillo spoke Portuguese as well as Spanish. But I'll ask a few friends of mine underneath the bars in Lisbon and let you know.

ANDREW SULLIVAN



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**Where We Stand**

*A commentary on public education and other critical issues*

# Reality Check

**By SANDRA FELDMAN, President**
**American Federation of Teachers**

There are almost four thousand students today at my alma mater, James Madison High School in Brooklyn, NY. They come from hardworking families representing virtually every ethnic and racial background in America, and they're getting a good education, just as I did. Graduating last month, along with my nephew Zachary, were classmates from Haiti, Bosnia and Brighton Beach, to name just a few of their birthplaces. Most of them will go on to some form of higher education—community colleges or a variety of 4-year colleges, universities or technical schools.

What all of these young people have in common is a good deal of hope for a strong future in this great and diverse nation, thanks to the high-quality education they received in New York City's public schools.

I'm grateful that my family—nieces, nephews and grandsons—keep me connected to the real world of learning. Too often, here in Washington, amidst the political and ideological wrangling (most recently over the technicalities of a complex education bill), policymakers can lose sight of the effect their actions have on schools and classrooms. But the enactment of any education law, particularly one as all-encompassing as the pending Elementary and Secondary Education Act (ESEA), has a significant impact on the lives of real students and their families.

## A closer look

President Bush and a bipartisan majority of legislators have made some important changes to ESEA—changes that are worth looking at more closely to see how, and whether, they'll do what they are intended to do.

One change is a provision that mandates annual testing of all children in grades 3 through 8. Make no mistake, testing is crucial—for determining if standards are being met, for measuring student progress and for identifying where students, and schools, need to improve. But students can also be *over*-tested. There is a risk that new tests mandated by the Federal government will be piled on top of existing state tests and become an extra burden on students, teachers, administrators and parents. That could force states and districts to substitute testing quantity for testing quality. We need to ensure that the ESEA requires coordination among federal, state and local officials to avoid this pitfall.

Furthermore, good tests are expensive to develop and administer. The sums that Congress has proposed for these new tests are nowhere near enough, and will amount to another unfunded federal mandate for the states. It would be a serious step backward if, instead of administering assessments connected to their specific standards, states were forced to use tests that have little or no relationship to standards-based classroom instruction. So, like it or not, test development and implementation have to be adequately funded.

*We need to make sure education policy choices have real benefits for students.*

A second important change in ESEA is increased "flexibility," a word that has very different connotations depending on the circumstances. When local school districts can waive burdensome regulations so successful educational programs can be used more easily, that's good. That kind of flexibility with federal funds has enabled many urban school districts to adopt proven, research-based reading programs, for example.

But if "flexibility" means that states are allowed to eliminate funding targeted to specific programs or needs—which in turn leads to a lack of accountability—that's bad.

For example, the new ESEA proposes to combine funding for professional development and class-size reduction. Both are critical initiatives, and both deserve full support. Lower class size significantly improves student achievement, especially in less advantaged schools. Teacher quality is also essential. In schools where teachers receive ongoing professional development to improve their classroom skills and adopt new methods, student achievement is rising.

## Preventing "either-or" choices

Forcing states and school districts to make a choice between these two priorities amounts to practicing "triage" on our children. But many poor school districts will have to make those kinds of "either-or" choices about a number of crucial needs, from computer technology to after-school programs, unless Congress provides adequate funding for them.

Money alone is not a solution for all educational problems. But a solution without the funding to make it work is itself a problem. That's why Congress must adequately fund the new tests it is requiring, as well as these programs—like lower class size—that are needed to make sure our children succeed. And nothing should stop Congress from supplementing this work with other important legislation—funding for school modernization, for instance. These are investments that can make a profound difference for our children—at James Madison High School and across the country. They should be national priorities. ▮

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# Paying the Bill

THE SPIRIT OF Harry and Louise lives on. With Democratic control of the Senate making HMO reform much more likely, opponents are running advertisements warning that the leading proposal—co-sponsored by Senators John McCain, John Edwards, and Ted Kennedy—will mean higher premiums and, as a result, more people without health insurance. "I can barely afford insurance now," one worried citizen tells the TV camera. Then comes a woman nestling a child in her arms: "I'll lose my coverage if costs go up."

She may be right. The bill's supporters don't like to admit it, but, as a recent study by the Congressional Budget Office (CBO) demonstrates, the McCain-Edwards-Kennedy bill will almost certainly raise insurance costs—considerably more than the White House-backed alternative. That means people will have to pay more for their coverage, and some will lose it altogether. But that's not a reason to oppose McCain-Kennedy, which gives people in HMOs protections they need; it's a reason to expand McCain-Kennedy so it also addresses the problem of the uninsured. If the Bush administration is suddenly worried about Americans without health care, Senate Democrats should dare them to do something about it.

The McCain-Kennedy bill has two basic components. First, it enumerates various patients' rights: access to specialists, local emergency rooms, clinical trials, and so on. Then it provides a process for enforcement. A patient who believes his insurance company wrongly denied him treatment can appeal to an independent review panel; after that, he can sue for damages in federal or state court, with no cap on potential monetary awards for pain and suffering. It's that last provision that so irks Bush and the HMO lobby. They claim it will spawn frivolous litigation, padding the pockets of trial lawyers instead of protecting patients, and will drive up insurance premiums in the process. Their alternative—in the Senate, a bill co-sponsored by John Breaux, Bill Frist, and Jim Jeffords—restricts lawsuits to federal courts, which are traditionally less generous to plaintiffs, and caps damages at $500,000.

Sure enough, the CBO studied both plans and found that McCain-Kennedy will cost more. But that's because it would *do* more. According to the CBO's breakdown, a big reason for the added costs is that the McCain-Kennedy bill guarantees important services the Breaux-Frist-Jeffords bill omits, like access to all drug trials approved by the Food and Drug Administration and rules preventing insurance companies from retaliating against physicians who challenge HMO treatment decisions. And while the CBO did predict that McCain-Kennedy's liability provision would prove more expensive—accounting for slightly more than half of the disparity between the two bills—that's probably not because insurance companies would have to fork over huge sums in lawyers' fees and outrageous judgments. Mostly, it's because insurance companies, chastened by the threat of litigation, would offer the protections guaranteed by the law.

Is it worth spending more money to make sure HMOs provide better coverage? On balance, yes. Although HMO hysteria can get out of hand, the widespread testimony of patients and health care professionals does suggest that overzealous cost control has undermined good medicine in myriad ways—and occasionally even made the difference between life and death. Last year, in a poll by the Kaiser Family Foundation and Consumers Union, half of respondents reported problems with their insurance plans—and, of those, almost a quarter said the problems resulted in poorer health. Typically, the sickest patients reported the most dissatisfaction. Changing HMO practices, while not the most urgent item on the domestic agenda, is a worthy goal. And, while it will necessarily drive up costs, those are the trade-offs inherent in any successful regulation. Just think: Fewer people would go hungry if those damn food-safety regulations didn't drive up prices at the supermarket!

As in any regulatory effort, the trick is to address the consequences of increased cost, which in this case means providing health insurance not just to the thousands who could lose it because of HMO reform but to the 44 million who lack it already. And, politically, the fact that HMO reform drives up premiums could help this effort along. After all, now that President Bush has expressed his heartfelt concern for the uninsured, Democrats should call his bluff—and add spending increases for, say, Medicaid or the Children's Health Insurance Plan to the McCain-Kennedy bill. To pay for such increases, Congress might have to repeal part of the newly enacted tax cut. But such a trade-off makes sense for the same reason it makes sense to pass serious HMO reform: Good health care costs money. And it's worth it. ■



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**REVERSAL OF FORTUNE:** Grant Bob Torricelli this: He keeps an open mind. Ever since a Justice Department investigation of his finances began heating up this year—with *The New York Times* reporting allegations that he'd received a Rolex, Italian suits, a big-screen television, and cash from businessman David Chang—the New Jersey senator has judiciously reconsidered some earlier policy positions. After spending a good deal of his career inveighing against independent counsels—including co-sponsoring a 1999 amendment that would have put all existing ones out of business—Torricelli has now decided that he requires one himself to prevent his abuse at the hands of a partisan Justice Department. (Last week, Deputy Attorney General Larry Thompson turned him down.) Then there's Torricelli's disgust with the apparent Justice Department leakers who have fed details of his case to the *Times* and the Newark *Star-Ledger*. "Maybe they think that by embarrassment, by leaking stories, I can be intimidated from public life," he frothed at a fund-raiser last month. This from the same man who, as a member of the House Intelligence Committee in 1995, was rebuked by a congressional ethics panel for passing on classified details about CIA activity in Guatemala to the *Times*. Nor have Torricelli's reassessments been limited to matters of policy. Take his views about his personal Torquemada, Attorney General John Ashcroft, whose department Torricelli now claims "publicly raped" him. In December Torricelli described Ashcroft as a "person of considerable ability and great integrity." Apparently, it doesn't take one to know one.

**POOR REASONING:** As we note in this week's editorial, the most compelling Republican argument against HMO reform is that it will drive up insurance premiums, which will mean some people who currently have insurance will no longer be able to afford it. The legislation under consideration, opines Senate Minority Whip Don Nickles, "could cause millions of people to lose their insurance." Yet Nickles, like many of the Republicans who ostensibly oppose HMO reform because they're concerned about raising insurance premiums, also supports medical savings accounts—an alternative to traditional insurance in which subscribers put aside money in a tax-preferred account dedicated to health care expenses. The primary promoters of MSAs are the insurance companies that sell them, who also happen to be large contributors to the Republican Party. MSAs make sense for people who are relatively healthy and, absent some accident, will not run up large expenses. But they create a problem for the insurance market in general: As healthier people flee to MSAs, the population left in the regular insurance pool becomes, on average, sicker. And that leads to, you guessed it, higher insurance premiums. The likely result—as a widely respected 1996 Urban Institute study demonstrated—would be a bifurcated health care market in which the healthy save money but the sick pay more and, in the worst cases, can't afford insurance at all. So why is it wrong to raise premiums for the sake of protecting consumers but OK for the sake of Republican donors? Ah, the question answers itself.

**NEGATIVE THOUGHTS:** Last week, the *Wall Street Journal* editorial page published an Oval Office interview with President Bush conducted by *Journal* contributing editor Peggy Noonan. The apparent template was the fawning interviews of John F. Kennedy written by Joseph Alsop. "His hair is already grayer after five months in office," writes Noonan, "and as he grows older he looks to me more like his father, in the angles of his face and the way he moves it.

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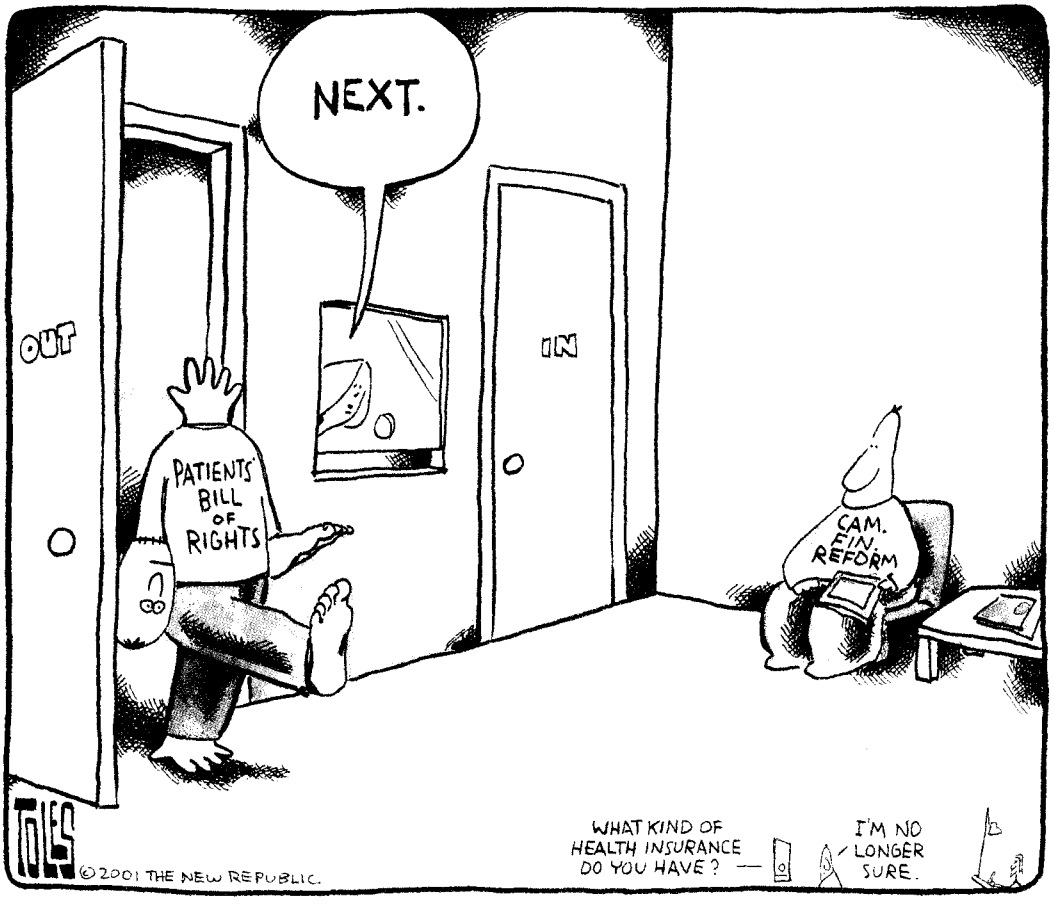
Gone is the tentativeness of 20 months ago, of the lost man of the early Republican debates. In its place seems an even-keeled confidence, even a robust faith in his own perceptions and judgments." The interview, in short, offered the most favorable possible setting for Bush to answer critics who said his lack of foreign policy understanding led him to naively trust Vladimir Putin. Bush recounted to Noonan some of his best lines from the summit, almost never quoting Putin's responses, occasionally noting that the Russian president was impressed. And what were these heretofore hidden gems? "It's negative to think about blowing each other up," Bush explained to the Russian leader. "That's not a positive thought. That's a Cold War thought." With that, Bush casually consigned deterrence to the dust heap of history, which might have led his Russian counterpart to wonder whether America planned on keeping any of its nuclear weapons, since, after all, their sole purpose is "blowing each other up." On the question of admitting Russia into NATO, Bush mused, "[W]hy not?" then admitted, "I haven't thought about the nuance of it." And with that, he wandered into another potentially radical revision of American policy—since the United States has never seriously entertained the idea of letting Russia join NATO, which would render the organization militarily, geopolitically, and morally incoherent. "What you're telling me," asked Noonan in one particularly hard-hitting question, "is this meeting with Putin was a kind of breakthrough, it was something special." No, what he was telling her is that we're in even bigger trouble than we'd thought.

**PAGING MR. ORWELL:** "GAZA STRIP: CEASE-FIRE HOLDS: Palestinians in the Gaza Strip lobbed a large-caliber mortar shell at a border crossing into Israel and fired anti-tank grenades at Israeli troops near the border with Egypt, lightly wounding a soldier, the army said. In the West Bank a fragile cease-fire held, but Palestinians reported that Jewish settlers burned cars, wheat fields and an olive grove in an area where a settler was shot dead on Wednesday."—*The New York Times*, June 22

**CHINA SYNDROME:** During the Hainan EP-3 spy-plane crisis, we were repeatedly assured that the Bush administration's kid-gloves approach to China was temporary. Just wait until the crewmembers are safely home, we were promised—then the White House will get tough with Beijing. How tough? Well, thus far the administration has declined to sell Taiwan the Aegis missile defense system (instead promising them diesel submarines that will almost certainly never be built), paved the way for China's entry into the World Trade Organization, and kept mum about Beijing's escalating campaign against Chinese-American scholars. Oh, and last week the White House let it be known that the United States won't oppose Beijing's bid to host the Olympics. How the Bushies square that with the Olympic Charter's statement that "respect for universal fundamental ethical principles" constitutes a core Olympic ideal, they didn't say. But perhaps the Olympics isn't the right vehicle for expressing displeasure with China, after all. And if the United States takes a dive on this one, we will gain leverage with the Chinese that can be used afterward, when we can get really tough. And when might that be? In 2008—just as the Bushies would be completing their second term.




**DEPARTMENT OF CORRECTIONS:** In last week's Notebook, we misidentified historian Joseph Ellis's book, *Founding Brothers: The Revolutionary Generation*. We regret the error. ■



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# The Supreme Court v. Lexis-Nexis.

# Freelanced

*By* JEFFREY ROSEN

I MAY BE a winner! The Supreme Court held this week that *The New York Times* violated my rights when it published four freelance op-ed pieces of mine between 1986 and 1995 and then sent them to Lexis-Nexis, the electronic database, without my permission. (After 1995 the *Times* accepted freelance articles only after the author explicitly surrendered all rights.) According to the website of the National Writers Union—whose president, Jonathan Tasini, brought the suit on behalf of freelancers without asking our permission—"the publishing industry's potential liability for the unauthorized electronic reproduction of freelance work ranges from a low of $2.5 billion ... to a high of $600 billion" over ten years. As if those lavish, two-figure freelance fees weren't enough.

But, despite Tasini's gloating, neither freelancers nor the public will benefit from the Court's decision. As a freelancer, I wasn't aggrieved when my pieces were archived in Lexis-Nexis; I was pleased. Circulating the ideas as widely as possible was the reason I wrote the op-eds in the first place. Although the *Tasini* decision represents a temporary victory for a few authors, many of us won't get any money, having waived our rights retroactively after 1995 as a condition for subsequent publication. Moreover, the decision is part of a disturbing pattern: the expansion of intellectual property rights in ways that limit access to electronic information. It will create troubling gaps in the historical record and encourage the building of electronic gates in spaces that should be open to the public.

Before 1976 an author who published an article without formally reserving the copyright effectively transferred it to the publisher. But in 1976 Congress amended the copyright law to create the opposite incentive, declaring that the publisher acquires from the author only "the privilege of reproducing and distributing the contribution as part of that particular collective work, any revision of that collective work, and any later collective work in the same series." The idea was that publishers could include a newspaper or encyclopedia article in a later, revised edition but not in an entirely new anthology or in a different magazine. The question before the Supreme Court was whether the *Times*' decision to store and distribute freelance articles in Lexis-Nexis and on CD-ROM qualified as a permissible "revision" of the original edition of *The New York Times* or as an entirely new collection.

This, of course, was a question Congress couldn't have anticipated in 1976, since electronic databases weren't yet widely in use. But a useful opinion would have attempted to translate the original purposes of the copyright act for the electronic age. The Court gave us a creative example of just this kind of translation a few weeks ago in the *Kyllo* case, in which Justice Antonin Scalia held that the police couldn't use cutting-edge electronic surveillance without a search warrant, so as to preserve the same degree of privacy in the twenty-first century that Americans took for granted in the eighteenth.

But Justice Ruth Bader Ginsburg's 7-2 opinion for the Court doesn't do any translating at all. Ginsburg says that the microfilm version of the *Times* qualifies as a "revision" of the print edition; but that Lexis-Nexis and the CD-ROM don't because the articles they contain are disaggregated and "appear disconnected from their original context." In fact, on the CD-ROM, readers view an exact copy of the paper edition of the *Times*, much as they do on microfilm; but Ginsburg objects that they can view only one page at a time, rather than scrolling through the surrounding pages. It's hard to see why anything should turn on this technical difference in the search function between the microfilm and CD-ROM versions of the *Times*. Both can plausibly be considered revised editions—since the *Times* is defined by its editorial judgments rather than by the medium in which the articles appear.

The copyright act prohibits publishers from taking articles out of context in only one, specific sense: If I publish an op-ed in *The New York Times*, the *Times* isn't allowed to embarrass me by reprinting my op-ed in an entirely different publication, such as *Penthouse*. That's because *Penthouse* isn't the *Times*—but a CD-ROM of the *Times* is, regardless of whether all the articles appear in the same order. And so is Lexis-Nexis: As Justice John Paul Stevens pointed out in his powerful dissent, the *Times* sends the entire print edition to Lexis-Nexis in electronic files, and you can search the entire edition by typing "date(is 6/25/01)" in the *New York Times* database. Readers of my op-eds in Lexis-Nexis know that they appeared in the *Times* on a particular page and column under a headline written by *Times* editors. The only thing that has changed is the physical arrangement of the article in relation to other articles, which is why it qualifies as a revision rather than a new collection.

BUT DEBATING EXACTLY what does or doesn't constitute a "revision" masks a more important point: As Justice Stephen Breyer, who joined Justice Stevens's dissent, knows better than anyone on the Court, overly expansive protection of the rights of authors and publishers is dangerous. As an assistant professor at Harvard Law School in 1970, Breyer wrote an article about the two goals of copyright law: protecting readers' access to ideas and providing incentives for authors to produce them. By granting windfalls to authors far beyond the incentives necessary to encourage them to write in the first place, Breyer argued, copyright can choke off public access to ideas. And a series of laws and court decisions in the 1990s have vindicated Breyer's fears.

For example, the Digital Millennium Copyright Act of 1998 takes the power to regulate copying away from writers, librarians, and readers and puts it in the hands of engineers and content providers. It prohibits tampering with electronic locks that regulate access to copyrighted materials, even though the locks—unlike the copyrights—may never



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# Who Won the Cold War?

**Arnold Beichman is a research fellow at the Hoover Institution.**

George Orwell wrote, "He who controls the past controls the future." Some of the most distinguished American historians are working hard to "control" the past by proving, to state it simply, that the United States did not win the cold war. Why? So that when our children and their children read their history textbooks they will never know that the democracies, led by the United States and a popular two-term president, Ronald Reagan, triumphed over Soviet totalitarianism.

**Liberal academic opinion has created the fiction that nobody won the cold war.** But there is no more Soviet Union, no Berlin Wall, no Gulag. Never mind. The United States did not "win" the cold war, period.

Weird. Everybody agrees that the Allies beat Germany in two world wars and that the United States lost in Vietnam. But when it comes to the question of who triumphed in the cold war, a great smog immediately blankets the question. George Kennan, for example, writes: "Nobody 'won' the cold war." Thirty years ago, however, he wrote, "The retraction of Soviet power from its present bloated and unhealthy limits is essential to the stability of world relationships."

Here it is thirty years later. There is no Soviet power; its "bloated and unhealthy limits" have been retracted without bloodshed. There isn't even a Soviet Union. So didn't the democracies win the cold war? The problem with Kennan and his revisionist followers is that they never tell you how they define victory.

Professor Ronald Steel has written this grudging verdict on the end of Soviet totalitarianism: "We have won a victory, of sorts." Of sorts! Would Professor Steel describe our triumph over fascism as "a victory, of sorts"?

Professor Steel seems to regret the end of the cold war; he writes, "In its perverted way, the cold war was a force for stability." Yes indeed—Afghanistan, Cuban missile crisis, uprisings in East Germany, Hungary, Poland, Czechoslovakia—some force for stability. On the other hand, the cold war was, he says, "dangerous, wasteful, obsessive, and at times irrational." So take your pick.

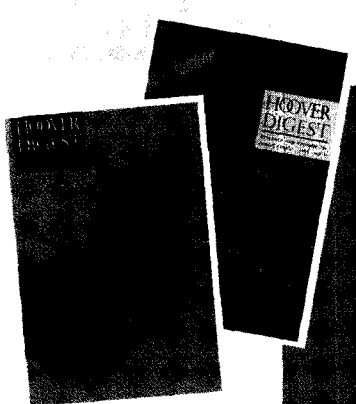
**Ask Russians who won the cold war and their replies are unequivocal.** Vladimir Lukin, onetime Boris Yeltsin foreign policy adviser; Aleksandr Bessmertnykh, former Russian foreign minister; Sergio Khrushchev, son of Nikita S. Khrushchev who recently became a U.S. citizen, all agree that the United States won the cold war.

Operation Rewrite about the cold war, in full swing for a decade, has produced books like *Losing Our Souls: The American Experience in the Cold War,* by Professor Edward Pessen, or an article in the *Chronicle of Higher Education,* by a Whitman College academic, titled "The United States Was the Loser in the Cold War" containing this hallucinatory sentence: "Considering what might have been, the United States was the loser in the cold war, not the winner."

All these exhibits reminded me of Jonathan Swift's observation in *Gulliver's Travels:* "there is nothing so extravagant and irrational which some philosophers have not maintained for truth." Ditto some historians.

*— Arnold Beichman*

Paid for by the Hoover Institution, Stanford University.

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expire. Another blow came that same year with the passage of the Sonny Bono Copyright Term Extension Act. When the United States was founded, traditional copyrights protected an author's exclusive rights for 14 years, with the possibility of one 14-year renewal. But these limited terms were dramatically extended by the Bono act, which was designed as a windfall for the heirs of Walt Disney and now protects copyrighted material for the life of the author plus 70 years. (This arguably violates the copyright clause of the Constitution, which authorizes Congress to protect the rights of authors "for limited Times.") And now Congress is considering a draconian database-protection law, which would allow corporate monopolies to limit access to electronic databases even if they contain information in the public domain.

Since the beginning of the twentieth century, "courts and corporations have exploited public concern for rewarding established authors by steadily limiting the rights of readers, consumers, and emerging artists," writes Siva Vaidhyanathan in his forthcoming book, *Copyrights and Copywrongs: The Rise of Intellectual Property and How It Threatens Creativity*. "All along, the author was deployed as a straw man in the debate." In this sense, the *Tasini* decision is the latest in a troubling trend. During the brief heyday of Napster, we faced the possibility of a music library with all the songs in the world accessible for public use. After a court held that Napster had violated the rights of music publishers, individual songs were extinguished like sputtering lights. Now media outlets will be encouraged to begin a similar process of extraction, removing freelance articles from databases like Lexis-Nexis unless the authors specifically request otherwise and creating holes in the historical record. The formerly complete archive of the newspaper of record will be transformed into Swiss cheese. It's not clear whom the Court thinks this unfortunate decision will help. But it isn't you, and it isn't me. ■

## White House Watch

# Go Away

*By* Ryan Lizza

Last week, two important letters arrived at the White House. One, sent by Henry Waxman, the top Democrat on the House Committee on Government Reform, raised new questions about Bush adviser Karl Rove's failure to sell his stock holdings. The other, from Congress's investigative arm, the General Accounting Office, threatened the White House with the equivalent of a subpoena and then a lawsuit unless it "immediately" turned over detailed information about Vice President Dick Cheney's secretive energy task force. The letters barely registered with the press. Democrats, winning on the patients' bill of rights, largely ignored them. And the White House easily brushed off the few questions asked.

But, despite the yawns, the letters represent a turning point for the administration: It is now officially being investigated. At least in the case of the energy task force, it is all but certain that the White House will be forced to disclose information that will reinforce the belief that President Bush is too influenced by corporate interests—his greatest vulnerability. (Sixty-three percent of the public believes he's too tied to the oil industry, according to a recent *New York Times* poll.) Facing this new challenge, the Bushies have fallen back on the scandal-management theory they believe served them well during the campaign. It's called stonewalling.

So far, the White House has described the Rove incident as a mere bureaucratic snafu. Yes, Rove owned at least $100,000 in Intel stock last March when he met with company officials seeking the Bush administration's approval of a merger. But that was only because the White House counsel's office had been slow to issue the certificate of divestiture Rove requested (which would spare him the tax consequences of selling off those assets). But, as Waxman is now pointing out, the ethics rules are pretty clear, and Rove's efforts don't get him off the hook. "An employee is prohibited by criminal statute," say the regulations on ethical conduct for the executive branch, "from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he ... has a financial interest, if the particular matter will have a direct and predictable effect on that interest." Rove had three options: disqualify himself from discussions with Intel (or any other company where a conflict of interest existed), divest his assets, or obtain an official waiver. He clearly didn't do either of the first two. Waxman has asked the White House about the third. And on June 25, when a reporter asked press secretary Ari Fleischer if Rove had requested or been granted a waiver, Fleischer wouldn't answer, saying, "I think we're plowing old ground."

But it's a reasonable question. Generally, presidential appointees make comprehensive plans for dealing with potential conflicts of interest. For instance, when Environmental Protection Agency Administrator Christie Todd Whitman filed her financial disclosure report with the Office of Government Ethics, it was accompanied by a letter explaining that she intended to sell off the oil wells she owned within three months and that, in the meantime, "I will not participate personally and substantially in any particular matter that has a direct and predictable effect on Texas and Colorado oil wells." This is the type of ethical scrupulousness that Bush promised his administration would embody. Few believe Rove was trying to enrich himself with his involvement in the Intel situation. But that's exactly why waivers are available. If Rove did request a waiver, the White House is keeping it a secret. Instead, it's responding to inquiries by decrying the partisan culture of Washington.

But Rove's entanglements are nothing compared to the GAO's inquiry into the energy task force. At the request of Waxman and fellow Democratic Representative John Dingell, the GAO has asked the White House for a detailed accounting of how the task force functioned, including the names of all attendees at official meetings and the costs incurred. Most importantly, the GAO wants information on every meeting and interview between members or staff on



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the task force and individuals who provided information relevant to energy policy (e.g., lobbyists). It's demanding to know names and titles, meeting dates and locations, the information discussed, whether notes were kept, and how the White House decided whom to meet with. It's also asking for the same data on everyone who met with Cheney individually.

The White House reaction: Drop dead. In response to the inquiry, Cheney had his counsel, David Addington, send the GAO a letter urging that it "not proceed with the proposed inquiry." The GAO fired back a letter informing Addington that the review was "required by law." Addington retorted, in a longer second letter, that the GAO did not have the authority to investigate Cheney's task force. His arguments show just how hostile to disclosure this White House is. In his first argument, Addington parsed the meaning of the word "law," as in the GAO's authorization to investigate government activity carried out "under existing law." Addington argued that "existing law" means only statutes and excludes the U.S. Constitution, which is what authorized the president to organize his energy task force. This novel interpretation would mean that GAO inquiries into Hillary Clinton's health care task force (requested by Representative Bob Barr and other Republicans in 1994) and its inquiry into the Clinton war room that orchestrated the drive for permanent normal trading relations with China (requested by Representative Dan Burton last year) were illegal as well. Addington's second argument was that Waxman and Dingell were not authorized to request an investigation by the GAO because they are ranking members and not chairmen of their committees. But that's absurd: Since 1999, ranking members have initiated more than 170 GAO investigations.

THE GAO RESPONDED to Cheney's letter with a ten-page brief demolishing Addington's legal claims. "Since over a month has elapsed since our first request," wrote GAO General Counsel Anthony H. Gamboa, clearly exasperated, "we ask that the information we requested be provided immediately. As previously noted, Comptroller General Walker is prepared to issue a demand letter." The demand letter, which functions like a subpoena, is the last step before the GAO takes Cheney's office to court. Still, Cheney's people keep stalling. Spokeswoman Juleanna Glover-Weiss said on June 26: "The counsel has not had a chance to review at length that ten-page letter and consult with the Department of Justice as well as the White House counsel." One hint the White House isn't planning on giving in anytime soon: the phrase "executive privilege" sprinkled liberally throughout Addington's letters.

Cheney has a history of this kind of secrecy. When he was defense secretary, his Pentagon went to fantastic lengths to control news coverage of the Gulf war. During the campaign, it took a chorus of criticism before he promised to sever his financial ties to oil-industry giant Halliburton, where he had served as CEO. Recently, *The Washington Post* reported that Halliburton's dealings with Iraq were far more extensive than Cheney admitted on the stump. And, when he was hospitalized for chest pain in November and March, the White House was less than forthcoming about the seriousness of the episodes (a heart attack and an angioplasty).

And it's not just Cheney and Rove: Obstructionism has been the Bushies' response to potential scandals since the beginning of the campaign. So far, the Bushies think it works. By adamantly refusing to discuss his drug history, W. managed to weather a media firestorm over the issue in August of 1999. Until the campaign's final days, his aides suppressed his DUI arrest. "By temperament they really believe in secrecy and controlling information," says Waxman spokesman Phil Schiliro. It's not surprising to hear a partisan Democrat say that. But some Hill Republicans agree. "The problem that the vice president has," says one House GOP aide who worked for the Bush campaign and is monitoring the recent flaps, "is that his manner is to say, 'Who the hell would even question me? Look, just get the hell out of here. . . .' Someone asking him or even inferring that there might be a problem with what he's doing pisses him off so much that his natural reaction is to just flip everybody the bird." Natural or not, how long before the public flips it back? ■

**William F. Buckley steals a colleague's work.**

# Peer Review

*By* JONATHAN CHAIT

A FEW WEEKS ago I came across a column by William F. Buckley in *National Review Online* that began: "The following parable just came in from a friend, via the Internet." Buckley reprinted the parable in its entirety (some 300 words' worth), then concluded with some commentary of his own. What made the episode so odd was that Buckley apparently hadn't bothered to find out who had written the parable to begin with. (According to my two-minute Lexis-Nexis search, it was someone named Don Dodson of Fort Worth, Texas, in a letter to the *Chicago Tribune*.) Now, if somebody e-mailed me one of Buckley's columns, I wouldn't just reprint it with the attribution "via the Internet," even if I happened to think it was brilliant (which would be unlikely). But perhaps one of the joys of being William F. Buckley is not having to bother with such journalistic conventions.

Recently, though, Buckley seems to have taken his appropriation of other people's words a good deal further: He has ripped off an author who appeared in his own magazine. Michael Fumento, a senior fellow at the Hudson Institute, wrote a story for the print edition of *National Review* debunking the various health claims made by activists seeking to end the Navy's use of a training base on the Puerto Rican island of Vieques. (The issue date is June 25. But, as with most magazines, this date is when the issue is taken off newsstands, not when it goes on. Fumento's article was put into the Lexis-Nexis database on June 6.) On June 12, several days after Fumento's piece appeared, Buckley wrote a



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column for *National Review Online* on the same subject as Fumento's article.

There are, it bears mentioning, some differences between Fumento's piece and Buckley's piece. Fumento tells the story straight, presenting the activists' arguments and then knocking them down; Buckley employs a thin literary conceit, imagining how a defense lawyer for the Navy would rebut the charges. Fumento begins with the image of Al Sharpton sitting in jail for his anti-Vieques activism; Buckley ends with it.

But the core of both pieces is the rebuttal of the activists' health arguments, and here Buckley follows Fumento almost exactly, employing the same arguments in the same sequence, often using the same language. Indeed, most of the facts presented by Buckley appear to have been lifted directly from Fumento's article, though Fumento is not cited or even mentioned anywhere in Buckley's column. Judge for yourself:

FUMENTO: "To begin with, the Vieques inhabitants closest to the gunnery site live about nine miles away—and the gunnery site is downwind of them."
BUCKLEY: "Well, the gunnery done by the Navy is nine miles from the only population center of Vieques, and downwind from it, which means that whatever rises from the gunnery rises out to sea, not upwind to the inhabitants of Vieques."

FUMENTO: "The infant-mortality myth originated in February 2000, when the Puerto Rico Physicians and Surgeons Association held a press conference to claim that the rate was more than 50 percent higher on Vieques than in mainland Puerto Rico."
BUCKLEY: "The defense attorney would take on the infant-mortality charge, which originated in February 2000 when the Puerto Rico Physicians and Surgeons Association charged that in Vieques, infant mortality was 50 percent higher than in mainland Puerto Rico."

FUMENTO: "They presented their conclusions to the Puerto Rico Health Department; the very next day, Puerto Rico health secretary Dr. Carmen Feliciano publicly refuted the allegations, and accused the Physicians and Surgeons Association of 'lying to the public.' How so? They had neatly clipped out the years 1996 through 1998 from their statistics. With those years left in, the infant-mortality rate in Vieques is actually lower than that of mainland Puerto Rico."
BUCKLEY: "These representations—widely reiterated every day, everywhere—were weighed by Puerto Rico Health Secretary Dr. Carmen Feliciano, who observed that the organization had been 'lying to the public.' The Association had simply eliminated birth figures between 1996 and 1998. If they hadn't done so, the figures would have shown infant mortality in Vieques lower than in mainland Puerto Rico."

FUMENTO: "As for the high cancer rate, it comes from data compiled by Dr. Diego Zavala of the Puerto Rico Cancer Registry in 1997—which data actually show that the annual cancer rates on Vieques have been alternately both higher and lower than those of mainland Puerto Rico over the past several decades."
BUCKLEY: "Data show that the annual cancer rates on Vieques have been alternately both higher and lower than those of mainland Puerto Rico over the past several decades."

FUMENTO: "The data bounce around because the Vieques population is so low that each cancer case makes a big statistical impact; the activists merely picked the year that best served their cause."
BUCKLEY: "Moreover, he'd show that the volatility of Vieques cancer statistics rests on so simple a reason as that the population is so tiny that individual cases of cancer make big statistical splashes. The anti-Navy people simply picked the year that best served their prosecutorial cause."

FUMENTO: "The Johns Hopkins team concluded that 'within the constraint of the data available, no inference can be made as to the role of noise from naval gunfire in producing echocardiographic abnormalities'" and that there is "'insufficient basis for reaching a conclusion that Vieques residents have pericardial thickening or other heart abnormalities.'"
BUCKLEY: "The Johns Hopkins people will testify that 'within the constraint of the data available, no inference can be made as to the role of noise from naval gunfire in producing echocardiographic abnormalities.'"

Sure, it's easy for an opinion journalist to slip up and use somebody else's idea or quote without crediting him or her, but this looks pretty systematic. When I called Buckley, he practically admitted as much. He said, "When I'm quoting an article in my own magazine, I'm a little bit reluctant to continue to draw attention to my magazine. So about every fifth time, I don't." I hate to be a journalism scold, but perhaps modesty could be better served in other ways. ■

## Brooklyn Dispatch

# Static

*By* BENJAMIN SOSKIS

LAST FRIDAY AFTERNOON, about 25 men and women, mostly in their late fifties, marched outside a red-tiled house at 98 Vanderbilt Avenue, a quiet, tree-lined alcove in southwest Brooklyn. The multiracial crowd included labor and gay rights activists and at least one graying protester sporting a FREE MUMIA T-shirt. They were, in short, white supremacists.

At least, that's the way Utrice Leid might describe them. Leid is the recently appointed interim general manager of WBAI, the New York affiliate of Pacifica, the far-left inde-



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pendent radio network. Last December, Pacifica's national management put her in charge of the station, and, in the next few months, she canceled several shows and banned a number of veteran producers from the station. When WBAI fans objected, she called them racists. Which is loony. But not much more loony than what the demonstrators at 98 Vanderbilt are calling her: an agent of corporate aggression. Welcome to political discourse on the radical left.

FOR FOUR DECADES, WBAI has been one of the New York left's prized possessions: Its reporters were some of the first to broadcast live from North Vietnam; Yoko Ono was once its record librarian. On one occasion, *War and Peace* was read on air, cover to cover. Programs were doled out liberally to practically anyone with a radical-sounding cause—nuclear power, women's rights, alternative medicine. WBAI's programming was manic, scattershot, frequently unpolished, and always zealous. And the station's diehards loved it.

But, over the years, Pacifica's national board—which operates five local radio stations with more than 800,000 listeners—grew increasingly worried about the station's unprofessionalism, poor production standards, and insularity. The sound of flushing toilets from bathrooms near the production studio could at times be heard on air. And Pacifica spokesman Mike Powell says the station rarely gauged what its listeners wanted, relying instead on the whims of its producers, happily airing off-the-wall rants and conspiracy theories. In recent years, its donor list dropped to nearly half of what it was in the 1960s, and its listenership stagnated; recent demographic surveys showed its audience to be majority-white and middle-aged.

BILL RUSSELL

So on December 22, 2000, in what the protesters call the "Christmas Coup," Pacifica's new executive director, Bessie Wash, fired WBAI's general manager, Valerie Van Isler, along with its program director and union steward. Wash changed the locks at the lower-Manhattan station and appointed Leid as interim general manager. Leid then drew up a list of WBAI employees no longer permitted in the studio and, over the next several weeks, dismissed 21 volunteer producers and hosts. She also vigorously enforced a gag rule prohibiting any WBAI employee from discussing the dispute on air, once even cutting off a live program when New York Representative Major Owens raised the issue. (Leid claims she was only trying to silence the program's host.) She even installed a private security detail outside the station—and, when I showed up uninvited, she threatened to throw me out herself, except, as she explained, "it would give you too much pleasure."

Behind Leid's conflict with her predecessors lies a real disagreement over how much control "the community" (read: local activists) should have over "community radio" and how much should lie in the hands of radio professionals. But you'd barely know it from the rhetoric, which has become a virtual parody of lefty hysteria. The protesters are crying corporate takeover. According to one favored theory, the national board is planning to sell the station—estimated to be worth more than $100 million—and thinks that diluting its free-form style and radical politics will broaden its audience and therefore jack up its price. Bernard White, the program director fired in the "coup," says, "I think that their only model for success is NPR"—a virtual epithet in Pacifica circles. The demonstrators accuse the national management of trying to muzzle Amy Goodman, host of the Pacifica show "Democracy Now!," denying her press credentials for last year's Democratic convention. And they note that most of the shows that have been canceled—for instance, the city's only labor-related radio program, "Building Bridges," and "Grandpa" Al Lewis's show on race and prison issues—were devoted to radical and activist politics.

But the WBAI insurgents protest too much. For one thing, the national board insists it isn't selling. For another, Wash is hardly a corporate apologist; she's a respected former station manager of Pacifica's Washington, D.C., affiliate. And Leid earned her love beads as a host of a popular WBAI afternoon talk show, "Talkback." To this day the financially strapped Pacifica, dependent on individual donors for survival, still refuses to go the NPR route and accept corporate cash.

But if the protesters seem self-righteous, they are models of sanity compared to Leid, who, incredibly, has managed to get to their *left*. Leid has labeled the protesters' refusal to cooperate a betrayal of the "consciousness of collectivism." And, during an on-air rant in May, Leid, a native Trinidadian, claimed the protests were rooted in "white suprema-



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cist ideology" and argued that the men and women clamoring about the threat to community radio really "resent the idea of Pacifica being in the hands of a capable black woman." "It's about the will of the European to dominate," she fulminated in a show earlier that month, "and some folks simply *can't get over it*!" Since her diatribe, at least one other person of color on Pacifica's national board has echoed Leid's charge, claiming to have been singled out by protesters who believe an African American is "not smart enough" to serve.

Leid's allegations ignore a few small facts—for instance, that both Van Isler (the ousted general manager) and White (the axed program director) are black, and half of the dismissed WBAI staffers are minorities. But, then, on the far left, using microscopic ideological differences as an occasion to label your opponents as racists, McCarthyites, Stalinists, or Nazis is a venerable tradition. And, unfortunately, it's a tradition with which both sides of the WBAI squabble seem more than comfortable.

Which makes all the glowing talk of "community radio" rather ironic. Because, ultimately, it's the insularity of the far left and the kinship between the different players in the WBAI drama that create such vitriol—and also explain why there may be less to the vitriol than meets eye. That's how it seemed, anyway, on Friday afternoon outside 98 Vanderbilt Avenue, the home of Andrea Cisco, secretary of the national Pacifica board and operator of a diversity-training company. For two hours, unsure about whether she was actually inside, the 25 protesters had stood beating drums and chanting slogans like "Andrea Cisco, you can't hide / We charge you with radio-cide" and "Hey hey, ho ho / The corporate gang has got to go / Hey hey, ho ho / Andrea's next and then some mo'." After most of the demonstrators had disbanded, a red minivan passed, and its driver waved good-naturedly at the small crowd. "That was Andrea," White announced, sounding almost tickled. He chuckled to himself, folded up a few loose leaflets branding Cisco a "sellout," then headed home, just down the block. ■

**Bret Schundler, auto conservative.**

# Taking His Toll

*By* JOHN B. JUDIS

TINTON FALLS, NEW JERSEY

LAST TUESDAY'S REPUBLICAN gubernatorial primary gave New Jersey Democrats exactly what they wanted: an upset victory by conservative Bret Schundler over moderate Bob Franks. As one prominent Montclair Democrat put it, "New Jersey voters like moderate Republicans. They don't like people like Schundler on a statewide basis. It won't be a contest." And during the primary state GOP officials seemed to agree: Franks won the endorsement of 19 of the state's 21 Republican county chairmen. After all, Franks is a former four-time congressman who nearly beat Jon Corzine in last year's Senate race—even though the latter spent an unprecedented $60 million on his campaign. Schundler, by contrast, is a pro-life, pro-gun conservative who's never held office above the local level—easy pickings for Jim McGreevey, a strong Democratic nominee in a state Al Gore carried by 15 points.

Don't be too sure. Generally, moderate Republicans make stronger general-election candidates than conservatives do, especially in New Jersey. But Schundler may be an exception. For one thing, he's a big-city mayor with a track record of helping the poor, which makes him difficult to caricature as coldhearted. For another, he's associated himself with two sentiments that usually resonate in New Jersey: hostility to Trenton and affection for cars.

SCHUNDLER CAMPAIGNED FOR Gary Hart in 1984 before going to Wall Street, where he made several million dollars. A native Garden Stater, he lived in Jersey City while working across the Hudson. Disillusioned with the local Democratic machine, Schundler became a Republican in 1991. A year later, when Jersey City's mayor was forced out of office by an extortion conviction, Schundler was one of 19 candidates to run for the job. Eking out a victory with just 18 percent of the vote, he became mayor of a city where Democrats outnumber Republicans almost ten to one and minorities constitute 69 percent of the population. But, if his initial election seemed like a fluke, Schundler eventually proved otherwise, winning reelection by large margins in 1993 and 1997. His popularity stemmed from his ability to revive the city's dying economy and halt its crime wave. During his tenure, Schundler estimates, the annual crime rate dropped almost 40 percent, and, in 1999, Jersey City accounted for 90 percent of the new jobs created by the state's six largest cities. Indeed, Schundler really is what both Newt Gingrich and George W. Bush claimed to be: a conservative Republican genuinely concerned about the inner city. What mattered to voters in Jersey City, minorities included, was not Schundler's view on abortion but his introduction of community policing, his ingenuity at retiring the city's debts, and his gift for attracting new businesses to town.

Nonetheless, Schundler, who left office this year to run for governor, was given little chance against Franks, who entered the race in April when Acting Governor Donald DiFrancesco withdrew in the face of an ethics scandal. Fresh from his strong run against Corzine, Franks won the immediate support of the state's Republican machine, including the all-important county chairmen, who help raise money and determine whose name goes first on the ballot. The last time a statewide candidate won a GOP primary in the face of their opposition was in 1978.

But while self-identified conservatives represent less than one-quarter of the New Jersey electorate, they constitute at least half of the likely voters in statewide Republican primaries, and Schundler—a diehard opponent of gun control



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(he favors allowing citizens to carry concealed weapons) and abortion (he opposes it even in cases of rape and incest)—won them overwhelmingly. Perhaps even more importantly, Schundler aggressively supported the growing movement to abolish tolls on the Garden State Parkway. The parkway, which runs the length of the state, forces drivers to run a gauntlet of 35-cent tollbooths every few miles. According to its secretary, John Millett, Citizens Against Tolls boasts 25,000 members. While nonpartisan, it has promoted Schundler's candidacy.

Schundler also turned Franks's endorsement by state Republican leaders against him by running against the highly unpopular administration of Christie Todd Whitman. Under Whitman, who resigned in January to become administrator of the Environmental Protection Agency, New Jersey has suffered from the nation's highest auto insurance and property tax rates. Schundler promised to eliminate highway tolls within 180 days of taking office and to lower, not merely arrest the growth of, property taxes. In a televised debate with Franks, Schundler declared that the GOP "had control in Trenton nine years, and property taxes are still rising, the state income tax is at the highest level ever, sprawl has gotten worse, even the parkway tolls have gone up as well."

Meanwhile Franks, bereft of ideas, relied on the Republican organization to carry him to victory. (Franks aide Bill Baroni described the contest as "organization versus ideology.") Asked at a press conference two days before the primary why he should be elected, Franks replied, Bob Dole-style, "Bob Franks is the candidate who can defeat Jim McGreevey in November." As he sank in the polls, Franks grew desperate, misrepresenting Schundler's record in Jersey City and falsely accusing him of misallocating contributions to a fund he set up to support private school vouchers. In the end, Schundler won the primary with 57 percent of the vote.

BEATING MCGREEVEY IN the general election will be tougher in part because McGreevey shares some of Schundler's strengths. Like Schundler, McGreevey is a successful public official, having served since 1994 simultaneously as a state senator and as mayor of Woodbridge, a thriving suburban township in central New Jersey. Although virtually unknown in 1997 (much as Schundler was this year), McGreevey won the Democratic gubernatorial nomination and almost beat Whitman with a car-friendly proposal of his own: holding down the state's auto insurance rates. Both men are earnest, good-government wonks: Schundler recommended to me the virtue of British social market theory; McGreevey enthusiastically explained the success of reforms such as Michigan Governor John Engler's Renaissance Zones and North Carolina Governor Jim Hunt's school-accountability project.

McGreevey's advantage is that his ideological profile fits the New Jersey electorate far better than Schundler's. A moderate Democrat, McGreevey served as state chairman of the Democratic Leadership Council and generally favors market incentives over government regulation. He favors parental notification (with exceptions) for minors who want an abortion and has championed character education in schools. He is also an Irish Catholic who can appeal to New Jersey's white ethnics, who make up about 40 percent of likely voters. The state, meanwhile, is trending Democratic, dominated by socially moderate upscale suburbs that take their cue from the *New York Times* editorial page and by cities with large minority populations (such as Paterson and Newark). In exit polls after last year's election, 77 percent of New Jersey voters identified themselves as either "moderate" or "liberal." Such voters will not look kindly upon Schundler's support for concealed weapons.

But, despite his ideological advantages, McGreevey won't have as easy a time as many Democrats expect. For starters, Schundler is more charismatic. While McGreevey has difficulty rousing an audience, the former Jersey City mayor is a thematic politician who can turn an assault against tollbooths into a crusade to save America. ("If we take these tolls down," Schundler thundered before cheering supporters in Tinton Falls, "they'll say, 'God bless America. God bless the people for starting it all.'") Part of Schundler's appeal is his willingness to advance dramatic proposals—such as toll abolition and property tax rollback—even if he's unsure how to implement them. It's part demagoguery, part confidence in his own solutions—a mix that, while combustible, has worked in Jersey City.

MCGREEVEY IS MORE prudent. When I asked him his own view on the parkway tolls, he pointed out that the state still owes $600 million in debt on its highway bonds. "Everyone is in favor of abolishing the tolls," he says. "We are going to evaluate it and set forth a specific plan for reducing at least a percentage of the tolls." That's probably the correct approach for a governor to take. But it's not necessarily a winning message in a state that, for all its moderation, often goes to extremes in its hatred of taxes and tolls.

Schundler's general-election strategy will be to take his conservative base for granted and focus on taxes and tolls rather than guns and abortion. McGreevey will try to paint Schundler as an extremist—not only on guns and abortion but fiscal matters as well. McGreevey would seem to have history on his side: No Goldwater or Reagan Republican has ever won statewide office in New Jersey; the last one who tried, Jim Courter, was beaten easily by Democrat Jim Florio in the 1989 governor's race. But Schundler has precedents as well: When Whitman beat Florio four years later, it was because she associated herself with the anti-property-tax revolt. Schundler can also point to the recent success of Republican Jim Gilmore in Virginia, another heavily suburban state. In his 1997 gubernatorial race, Gilmore got suburban voters to ignore his opposition to abortion by promising to abolish the state's unpopular property tax on, you guessed it, automobiles. Democrat Don Beyer said Gilmore's plan was reckless and fiscally irresponsible, and he was right—Virginia's finances are now a mess. But Gilmore won, and today, as chairman of the Republican National Committee, he's a national player in the GOP. Schundler could be next. ■



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**Why trade won't bring democracy to China.**

# Trade Barrier

*By* LAWRENCE F. KAPLAN

ON FEBRUARY 25, business professor and writer Li Shaomin left his home in Hong Kong to visit a friend in the mainland city of Shenzhen. His wife and nine-year-old daughter haven't heard from him since. That's because, for four months now, Li has been rotting in a Chinese prison, where he stands accused of spying for Taiwan. Never mind that Li is an American citizen. And never mind that the theme of his writings, published in subversive organs like the U.S.-China Business Council's *China Business Review*, is optimism about China's investment climate. Li, it turns out, proved too optimistic for his own good. In addition to rewarding foreign investors, he believed that China's economic growth would create, as he put it in a 1999 article, a "rule-based governance system." But, as Li has since discovered, China's leaders have other plans.

Will American officials ever make the same discovery? Like Li, Washington's most influential commentators, politicians, and China hands claim we can rely on the market to transform China. According to this new orthodoxy, what counts is not China's political choices but rather its economic orientation, particularly its degree of integration into the global economy. The cliché has had a narcotic effect on President Bush, who, nearly every time he's asked about China, suggests that trade will accomplish the broader aims of American policy.

Bush hasn't revived Bill Clinton's recklessly ahistorical claim that the United States can build "peace through trade, investment, and commerce." He has, however, latched onto another of his predecessor's high-minded rationales for selling Big Macs to Beijing—namely, that commerce will act, in Clinton's words, as "a force for change in China, exposing China to our ideas and our ideals." In this telling, capitalism isn't merely a necessary precondition for democracy in China. It's a sufficient one. Or, as Bush puts it, "Trade freely with China, and time is on our side." As Congress prepares to vote for the last time on renewing China's normal trading relations (Beijing's impending entry into the World Trade Organization will put an end to the annual ritual), you'll be hearing the argument a lot: To promote democracy, the United States needn't apply more political pressure to China. All we need to do is more business there.

Alas, the historical record isn't quite so clear. Tolerant cultural traditions, British colonization, a strong civil society, international pressure, American military occupation and political influence—these are just a few of the explanations scholars credit as the source of freedom in various parts of the world. And even when economic conditions do hasten the arrival of democracy, it's not always obvious which ones. After all, if economic factors can be said to account for democracy's most dramatic advance—the implosion of the Soviet Union and its Communist satellites—surely the most important factor was economic collapse.

And if not every democracy emerged through capitalism, it's also true that not every capitalist economy has produced a democratic government. One hundred years ago in Germany and Japan, 30 years ago in countries such as Argentina and Brazil, and today in places like Singapore and Malaysia, capitalist development has buttressed, rather than undermined, authoritarian regimes. And these models are beginning to look a lot more like contemporary China than the more optimistic cases cited by Beijing's American enthusiasts. In none of these cautionary examples did the free market do the three things businessmen say it always does: weaken the coercive power of the state, create a democratically minded middle class, or expose the populace to liberal ideals from abroad. It isn't doing them in China either.

One of the most important ways capitalism should foster democracy is by diminishing the power of the state. Or, as Milton Friedman put it in *Capitalism and Freedom*, "[t]he kind of economic organization that provides economic freedom directly, namely, competitive capitalism, also promotes political freedom because it separates economic power from political power and in this way enables the one to offset the other." In his own way, Bush makes the same point about China: "I believe a whiff of freedom in the marketplace will cause there to be more demand for democracy." But the theory isn't working so well in the People's Republic, whose brand of capitalism isn't quite what Adam Smith had in mind.

China's market system derives, instead, from a pathological model of economic development. Reeling from the economic devastation of the Mao era, Deng Xiaoping and his fellow party leaders in the late 1970s set China on a course toward "market socialism." The idea was essentially the same one that guided the New Economic Policy in Soviet Russia 50 years before: a mix of economic liberalization and political repression, which would boost China's economy without weakening the Communist Party. And so, while leaving the party in control of China's political life, Deng junked many of the economy's command mechanisms—granting state-owned enterprises more autonomy, opening the country to limited investment, and replacing aging commissars with a semiprofessional bureaucracy. The recipe worked well: China has racked up astronomical growth rates ever since. And democracy seems as far away as ever.



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The reason isn't simply that government repression keeps economic freedom from yielding political freedom. It's that China's brand of economic reform contains ingredients that hinder—and were consciously devised to hinder—political reform. The most obvious is that, just as the state retains a monopoly on the levers of coercion, it also remains perched atop the commanding heights of China's economy. True, China has been gradually divesting itself of state-owned enterprises, and the process should quicken once China enters the World Trade Organization (WTO). But Beijing's leaders have said they will continue to support China's most competitive and critical industries. Taking a cue from authoritarian South Korea during the 1980s, China's leaders have proposed sponsoring industrial conglomerates in crucial sectors of the economy, transformed industrial ministries into "general associations," merged failing state-owned firms with more successful ones, and established organizations to, as Chinese economist Xue Muqiao has put it, "serve as a bridge between the state and the enterprises."

But that's where any similarities with South Korea end. Unlike South Korea, the Philippines, and Taiwan, which evolved from authoritarianism (and did so, significantly, as de facto protectorates of the United States), China even today has no effective system of property rights—a signature trait that distinguishes its Communist regime from traditional authoritarian ones. The absence of a private-property regime in China means that, at the end of the day, the state controls nearly the entire edifice on which China's "free" markets rest. It also means that China's brand of capitalism blurs, rather than clarifies, the distinction between the public and the private realms on which political liberty depends. Nor is that the only requisite for democracy that China's markets lack. As the imprisonment of Li Shaomin and thousands of other political prisoners attests, capitalism in the PRC still operates within the confines of an arbitrary legal order and a party-controlled court system. "China is still a lawless environment," says University of Pennsylvania sinologist Arthur Waldron. "Whether in terms of individual rights or the rights of entrepreneurs, interests are protected not by institutions but by special relationships with those in power."

BEFORE HE WAS arrested, Li diagnosed this condition as "relation-based capitalism." What he meant was that relations with government officials, not property rights or the rule of law, underpin the Chinese market. Because the political foundations of China's economy remain the exclusive property of the state, China's entrepreneurs operate with a few degrees of separation, but without true autonomy, from the government. Hence, capital, licenses, and contracts flow to those with connections to officials and to their friends and relatives, who, in turn, maintain close relations with, and remain beholden to, the regime. Their firms operate, in the words of Hong Kong-based China specialist David Zweig, "[l]ike barnacles on ships, ... draw[ing] their sustenance from their parastatal relationships with the ministries from which they were spun off."

Helping to keep all these distortions in place are Deng's functionaries, who now constitute the world's largest bureaucracy and still control the everyday levers of the Chinese economy. Today, they function as the engines and administrators of a market increasingly driven by skimming off the top. The foreign-trade sector offers particularly easy pickings. In 1995, for instance, the World Bank found that while China's nominal tariff rate was 32 percent, only a 6 percent rate was officially collected. Presumably, much of the difference went into the pockets of Chinese officials. And even though WTO accession will reduce opportunities for rent-seeking from inflated trade tariffs, China's bureaucracy will be able to continue siphoning funds from distorted interest rates, the foreign exchange markets, and virtually any business transaction that requires its involvement—which is to say, nearly every business transaction. Nor is the problem merely the corrupting influence these bureaucrats wield over China's markets. The larger problem is that, whereas in the United States the private sector wields enormous influence over the political class, in China the reverse is true.

FOR PRECISELY THIS reason, Washington's celebrations of the democratic potential of the new Chinese "middle class" may be premature. "Entrepreneurs, once condemned as 'counter-revolutionaries,' are now the instruments of reform.... [T]his middle class will eventually demand broad acceptance of democratic values," House Majority Whip Tom DeLay insisted last year. Reading from the same script, President Bush declares that trade with China will "help an entrepreneurial class and a freedom-loving class grow and burgeon and become viable." Neither DeLay nor Bush, needless to say, invented the theory that middle classes have nothing to lose but their chains. In the first serious attempt to subject the ties between economic and political liberalization to empirical scrutiny, Seymour Martin Lipset published a study in 1959, *Some Social Requisites of Democracy*, which found that economic development led to, among other things, higher levels of income equality, education, and, most important, the emergence of a socially moderate middle class—all factors that promote democratization. More recent studies have found that rising incomes also tend to correlate with participation in voluntary organizations and other institutions of "civil society," which further weakens the coercive power of the state.

But middle classes aren't always socially moderate, and they don't always oppose the state. Under certain conditions, late modernizing economies breed middle classes that actively oppose political change. In each of these cases, a strong state, not the market, dictates the terms of economic modernization. And, in each case, an emerging entrepreneurial class too weak to govern on its own allies itself—economically and, more importantly, politically—with a reactionary government and against threats to the established order. In his now-classic study *Social Origins of Dictatorship and Democracy*, sociologist Barrington Moore famously revealed that, in these "revolutions from above," capitalist transformations weakened rather than strengthened liberalism. In the case of nineteenth-century Japan, Moore writes that the aim of those in power was to "preserve as much as possible of the advantages the ruling class had



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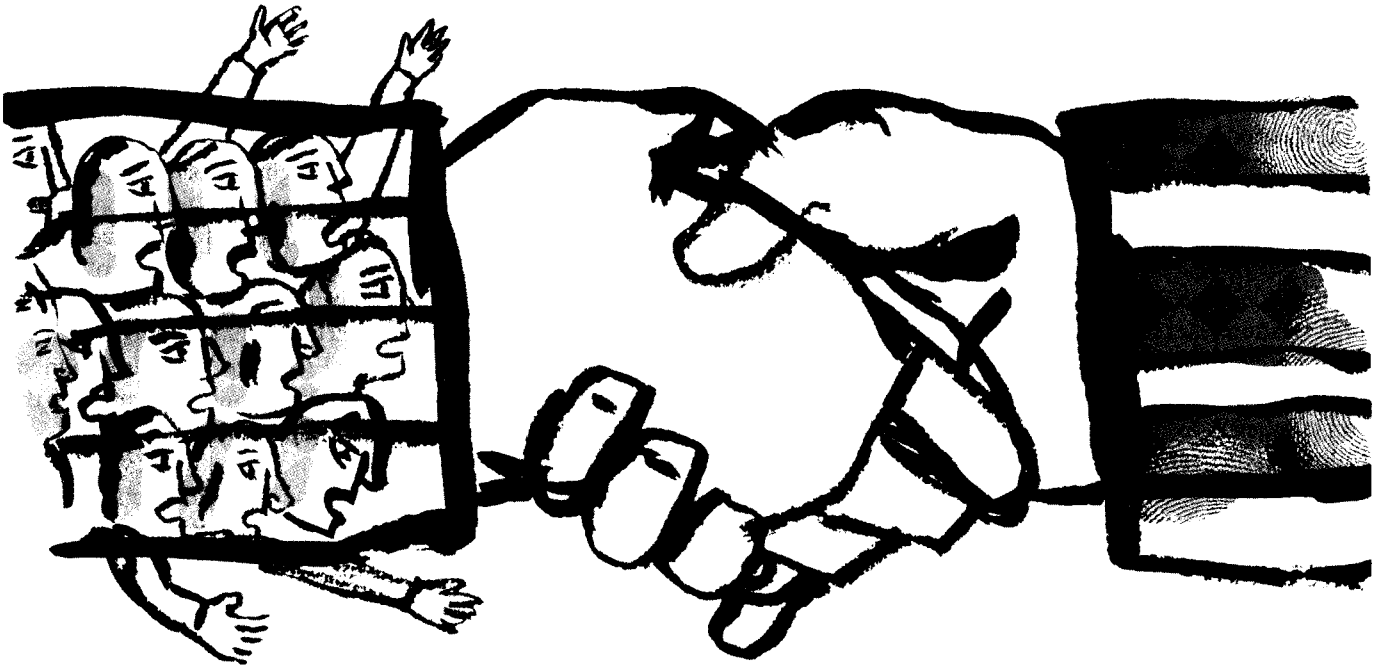

ROBERT NEUBECKER

enjoyed under the *ancien regime*, cutting away just enough ... to preserve the state, since they would otherwise lose everything." Japan's rulers could do this only with the aid of a commercial class, which eagerly complied, exchanging its political aspirations for profits. On this point, at least, Marx and Engels had things right. Describing the 1848 revolution in Germany, they traced its failure partly to the fact that, at the end of the day, entrepreneurs threw their support not behind the liberal insurrectionists but behind the state that was the source of their enrichment.

MUCH THE SAME process is unfolding in China, where economic and political power remain deeply entwined. In fact, China's case is even more worrisome than its historical antecedents. In Germany and Japan, after all, an entrepreneurial class predated the state's modernization efforts, enjoyed property rights, and, as a result, possessed at least some autonomous identity. In China, which killed off its commercial class in the 1950s, the state had to create a new one. Thus China's emerging bourgeoisie consists overwhelmingly of state officials, their friends and business partners, and—to the extent they climbed the economic ladder independently—entrepreneurs who rely on connections with the official bureaucracy for their livelihoods. "It is improbable, to say the least," historian Maurice Meisner writes in *The Deng Xiaoping Era: An Inquiry Into the Fate of Chinese Socialism*, "that a bourgeoisie whose economic fortunes are so dependent on the political fortunes of the Communist state is likely to mount a serious challenge to the authority of that state ... the members of China's new bourgeoisie emerge more as agents of the state than as potential antagonists."

A steady diet of chauvinistic nationalism hasn't helped. In the aftermath of the Tiananmen Square massacre, party leaders launched a "patriotism" campaign, a sentiment they defined as "loving the state" as well as the Communist Party. As the Shanghai-based scholar and party apologist Xiao Gongqin explains, "[T]he overriding issue of China's modernization is how, under new historical circumstances, to find new resources of legitimacy so as to achieve social and moral integration in the process of social transition." To Xiao and others like him, the answer is nationalism. And, as anyone who turned on a television during the recent EP-3 episode may have noticed, it's working. Indeed, independent opinion polling conducted by the Public Opinion Research Institute of People's University (in association with Western researchers, who published their findings in 1997), indicate greater public support for China's Communist regime than similar surveys found a decade earlier. And, contrary to what development theory might suggest, the new nationalism appears to have infected the middle class—particularly university students and intellectuals—more acutely than it has China's workers and farmers. "The [closeness of the] relationship between the party and intellectuals is as bad as in the Cultural Revolution," a former official in the party's propaganda arm noted in 1997. Even many of China's exiled dissidents have fallen under its spell.

IN ADDITION TO being independent of the regime and predisposed toward liberal values, China's commercial class is supposed to be busily erecting an independent civil society. But, just as China's Communist system restricts private property, it prohibits independent churches and labor unions, truly autonomous social organizations, and any other civic institutions that might plausibly compete with the state. Indeed, China's leaders seem to have read Robert Putnam's *Bowling Alone* and the rest of the civil-society canon—and decided to do exactly the reverse of what the literature recommends. "Peasants will establish peasants' organizations as well, then China will become another Poland," senior party official



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Yao Yilin reportedly warned during the Tiananmen protests. To make sure this fear never comes true, China's leaders have dealt with any hint of an emerging civil society in one of two ways: repression or co-optation. Some forbidden organizations—such as Falun Gong, the Roman Catholic Church, independent labor unions, and organizations associated with the 1989 democracy movement—find their members routinely imprisoned and tortured. Others, such as the Association of Urban Unemployed, are merely monitored and harassed. And as for the officially sanctioned organizations that impress so many Western observers, they mostly constitute a Potemkin façade. "[A]lmost every ostensibly independent organization—institutes, foundations, consultancies—is linked into the party-state network," says Columbia University sinologist Andrew Nathan. Hence, Beijing's Ministry of Civil Affairs monitors even sports clubs and business associations and requires all such groups to register with the government.

THE SAME KIND of misreading often characterizes celebrations of rural China's "village committees," whose democratic potential the engagement lobby routinely touts. *Business Week* discerns in them evidence "of the grassroots democracy beginning to take hold in China." But that's not quite right. China's leaders restrict committee elections to the countryside and, even there, to the most local level. Nor, having been legally sanctioned 14 years ago, do they constitute a recent development. More important, China's leaders don't see the elections the way their American interpreters do. In proposing them, says Jude Howell, co-author of *In Search of Civil Society: Market Reform and Social Change in Contemporary China*, party elites argued that elected village leaders "would find it easier to implement central government policy and in particular persuade villagers to deliver grain and taxes and abide by family planning policy. Village self-governance would thus foster social stability and order and facilitate the implementation of national policy. By recruiting newly elected popular and entrepreneurial village leaders, the Party could strengthen its roots at the grassroots level and bolster its legitimacy in the eyes of rural residents." Which is exactly what it has done. In races for village committee chairs, the Ministry of Civil Affairs allows only two candidates to stand for office, and until recently many townships nominated only one. Local party secretaries and officials often push their favored choice, and most committee members are also members of the Communist Party, to which they remain accountable. Should a nonparty member be elected, he must accept the guidance of the Communist Party, which, in any case, immediately sets about recruiting him. As for those rare committee members who challenge local party officials, their success may be gleaned from the fate of elected committee members from a village in Shandong province who in 1999 accused a local party secretary of corruption. All were promptly arrested.

Still, the very fact that China's leaders feel compelled to bolster their legitimacy in the countryside is telling. Last month Beijing took the unusual step of releasing a report, "Studies of Contradictions Within the People Under New Conditions," which detailed a catalogue of "collective protests and group incidents." What the report makes clear is that Beijing's leaders think China's growing pool of overtaxed farmers and unemployed workers, more than its newly moneyed elites, could become a threat to the regime. Fortunately for the authorities, with no political opposition to channel labor unrest into a coherent movement, protests tend to be narrow in purpose and poorly coordinated. And the wheels of repression have already begun to grind, with Beijing launching a "strike hard" campaign to quell any trouble. In any case, what these formerly state-employed workers have been demonstrating for is not less communism, but more—a return to the salad days of central planning.

WHICH BRINGS US to the final tenet of the engagement lobby: that commerce exposes China to the ideals of its trading partners, particularly those of the United States. As House Majority Leader Dick Armey has put it, "Freedom to trade is the great subversive and liberating force in human history." Or, as Clinton National Security Adviser Sandy Berger burbled in 1997, "The fellow travelers of the new global economy—computers and modems, faxes and photocopiers, increased contacts and binding contracts—carry with them the seeds of change." But the Chinese disagree. To begin with, they don't import much. And economists predict that won't change dramatically once they've joined the WTO, since China's leaders have committed themselves to the kind of export-oriented, mercantilist growth model that South Korea, Japan, and Taiwan pursued in decades past. Last year, for instance, China exported $100 billion in goods and services to the United States and only imported $16 billion worth. Hence, for every six modems it sent to America, Sandy Berger sent back only one.

To be sure, that one modem may carry with it seeds of change. Bush, for instance, says, "If the Internet were to take hold in China, freedom's genie will be out of the bottle." Alas, through links to Chinese service providers, Beijing tightly controls all access to the Web. And Western investors in China's information networks have eagerly pitched in. One Chinese Internet portal, bankrolled by Intel and Goldman Sachs, greets users with a helpful reminder to avoid "topics which damage the reputation of the state" and warns that it will be "obliged to report you to the Public Security Bureau" if you don't. But Goldman Sachs needn't worry. If anything, China's recent experience lends credence to the pessimistic theories of an earlier era, which held that nations shape the uses of technology rather than the other way around. Thus Beijing blocks access to damaging "topics" and to Western news sources like *The New York Times*, *The Washington Post*, and this magazine. It also monitors e-mail exchanges and has arrested Internet users who have tried to elude state restrictions. And, in ways that would make Joseph Goebbels blush, the government uses websites—and, of course, television, newspapers, and radio—to dominate the circuits with its own propaganda. "Much as many people might like to think the Internet is part of a bottom-up explosion of indi-



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vidualism in China, it is not," writes Peter Lovelock, a Hong Kong-based academic who studies the Internet's effect in the PRC. Instead, it provides "an extraordinarily beneficial tool in the administration of China." And that tool was on vivid display during the EP-3 crisis, when China blocked access to Western news sources and censored chat rooms.

American politicians describe foreign direct investment, too, as a potent agent of democratization. But, in this case, they're not even paraphrasing political science literature they haven't read, because the literature makes no such claim. In fact, a 1983 study by the University of North Carolina's Kenneth Bollen found that levels of foreign trade concentration and penetration by multinational corporations have no significant effect on the correlation between economic development and democracy. In China's case, it's easy to understand why. Beijing requires foreign investors in many industries to cooperate in joint ventures with Chinese partners, most of whom enjoy close ties to the government. These firms remain insulated mainly in three coastal enclaves and in "special economic zones" set apart from the larger Chinese economy. Moreover, they export a majority of their goods—which is to say, they send most of their "seeds of change" abroad. At the same time, their capital largely substitutes for domestic capital (foreign-owned firms generate half of all Chinese exports), providing a much-needed blood transfusion for China's rulers, who use it to accumulate reserves of hard currency, meet social welfare obligations, and otherwise strengthen their rule. Nor is it clear that U.S. companies even want China to change. If anything, growing levels of U.S. investment have created an American interest in maintaining China's status quo. Hence, far from criticizing China's rulers, Western captains of industry routinely parade through Beijing singing the praises of the Communist regime (and often inveighing against its detractors), while they admonish America's leaders to take no action that might upset the exquisite sensibilities of China's politburo. Business first, democracy later.

BUT ULTIMATELY THE best measure of whether economic ties to the West have contributed to democratization may be gleaned from China's human rights record. Colin Powell insists, "Trade with China is not only good economic policy; it is good human rights policy." Yet, rather than improve that record, the rapid expansion of China's trade ties to the outside world over the past decade has coincided with a worsening of political repression at home. Beijing launched its latest crackdown on dissent in 1999, and it continues to this day. The government has tortured, "reeducated through labor," and otherwise persecuted thousands of people for crimes no greater than practicing breathing exercises, peacefully championing reforms, and exercising freedom of expression, association, or worship. It has arrested Chinese-American scholars like Li Shaomin on trumped-up charges, closed down newspapers, and intimidated and threatened dissidents. Nor is it true that linking trade and human rights will necessarily prove counterproductive. When Congress approved trade sanctions against Beijing in the aftermath of Tiananmen, China's leaders responded by releasing more than 800 political prisoners, lifting martial law in Beijing, entering into talks with the United States, and even debating among themselves the proper role of human rights. As soon as American pressure eased, so did China's reciprocal gestures.

TURNING A BLIND eye to Beijing's depredations may make economic sense. But to pretend we can democratize China by means of economics is, finally, a self-serving conceit. Democracy is a political choice, an act of will. Someone, not something, must create it. Often that someone is a single leader—a Mikhail Gorbachev, a King Juan Carlos, or a Vaclav Havel. But such a man won't be found in China's current leadership. Other times, the pressure for democracy comes from a political opposition—the African National Congress in South Africa, Solidarity in Poland, or the marchers in Tiananmen Square. But there are no more marchers in Tiananmen Square.

Pressure for democratization, however, can also come from abroad. And usually it comes from the United States or from nowhere at all. During the 1980s America applied diplomatic and economic pressure to repressive regimes from Poland to South Africa; intervened to prevent military coups in the Philippines, Peru, El Salvador, Honduras, and Bolivia; and loudly enshrined human rights and democracy in official policy. The United States played a pivotal and direct role in democratizing even countries like South Korea and Taiwan, which many China-engagers now tout as evidence that the market alone creates political freedom. Appropriately enough, the decade closed with democracy activists erecting a facsimile of the Statue of Liberty in Tiananmen Square.

The commercialist view of China, by contrast, rests on no historical foundation; it is a libertarian fantasy. "The linkage between development and rights is too loose, the threshold too high, the time frame too long, and the results too uncertain to make economic engagement a substitute for direct policy intervention," writes Columbia's Nathan. Yet make it a substitute is precisely what the United States has done. And, far from creating democracy, this subordination of political principle has created the justified impression of American hypocrisy and, worse, given U.S. policymakers an excuse to do nothing.

Maybe the claim that we can bring liberty to China by chasing its markets will prove valid in the long run. But exactly how long is the long run? A political scientist at Stanford University says it ends in 2015, when, he predicts, China will be transformed into a democracy. Others say China will democratize before that. Still others say it may take a half-century or more. The answer matters. After all, while capitalist Germany and Japan eventually became democracies, it wasn't capitalism that democratized them, and it certainly wasn't worth the wait. In China's case, too, no one really knows what might happen as we wait for politics to catch up with economics. With the exception, perhaps, of Li Shaomin, who tested the link between economic and political liberalization in China for himself. He's still in jail. ■



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# Stanley Kauffmann on Films

## High Places and Low

RELATIVELY uncelebrated, a unique film tradition has enriched viewers for almost one hundred years. It has many elements of the documentary but differs because it is more than factual; the director provides just enough story to illuminate the lives and traditions of a particular region. The granddaddy of such films is Robert Flaherty's *Nanook of the North* (1922). Flaherty had first made a documentary about the Eskimos of the Baffin Bay area but felt it was inauthentic; he went back and made a film with a "slight narrative" that dramatized those people's lives—not altering them but vivifying them.

*Nanook* is a treasure in itself, and also a sire. A scattering of its progeny: *Chang* (1927), the Schoedsack-Cooper film about a family that lives in a Thailand jungle; *Gabbeh* (1996), Mohsen Makhmalbaf's tale about those people of Iran who make lovely carpets; and *A Time for Drunken Horses* (2000), Bahman Ghobadi's story of the oppressed Kurds in Iranian Kurdistan. All of these films articulate lives very different from our own, bringing them close with vectors of drama to which we can respond.

Now arrives one of the best films in this genre. **Himalaya** (Kino) is set in Nepal's Dolpo region, vast mountainous country inhabited by Tibetans who nestle in their ancient, cherished culture. A French author and documentarian named Eric Valli has lived in that region for almost twenty years. The villagers know him and quite evidently trust him; the people who perform in his story—adequately, too—have never acted before. One exception is a woman who previously appeared in one film. As for all the others, the wonder is not only that they had never acted before but that possibly some of them had never seen a film. Imagine how helpful Valli had to be with them.

Caravans—of yaks—are the village's chief means of support and supply. The villagers mine salt in the mountains (which we do not see), then pack it on their yaks and cross towering mountain ranges to a town where they trade the salt for grain and other needs. To lead a caravan is thus an important job in this community. But *Himalaya* is very far from a camcorder piece of ethnographic research, a filmic field report. It is visually exquisite. Scene after scene, shot after shot is so gorgeous that Valli is profligate with them. Gorgeousness is his medium here, and a sort of counterpoint for the rugged life led within it. He had two superb cinematographers, Eric Guichard and Jean-Paul Meurisse, who clearly were in love with their material. The ranges of peaks, the sunrises and sunsets, the profiles of caravans against the sky, the great mountains bare of trees and the appearance of trees as a caravan journeys—all these and much more are the ambience in which the film dwells. One sequence is especially fine: a blinding snowstorm high in a mountain pass. I have never been more thoroughly chilled by a film blizzard.

The screenplay is by Valli and Olivier Dazat, with four others. The dialogue is in Tibetan. (Some of the subtitles could use a little flexing: "Group our yaks!" for instance.) The story is simple. Tinle is the elderly chief of this remote mountain village, the leader of the village's caravans, who wants his son to succeed him. The son is killed in an accident, and Tinle then fixes on Passang, his young grandson, as his successor. But Karma, a stalwart young man who is the same age as the dead son, wants the succession for himself and moves to it by leading a caravan on his own—thus straining a tradition. There is rivalry between the aging Tinle and the firebrand Karma. What's more, affection develops between Karma and Tinle's bereaved daughter-in-law. These elements of conflict and desire move out of the village onto the long caravan trails, through space that itself seems, paradoxically, to define the illimitable.

The performances are as sure as they need to be, supported by the fact that each of the players is part of the culture that is being dramatized. Simply in terms of their faces, the cast provides a salon exhibit of portraits. Those visages seem hewn out of the landscape.

Their lives, it must be underscored, are lived in religion. Buddhism, blended with Hinduism, guides them always. (The constant presence of immensity around them seems to imply the constant presence of divinities.) The will of the gods is sought when any decision must be made. This immanence of religion is reflected in the score by Bruno Coulais, much of which is based on Buddhist chants. The music is part of the film's completeness, a wholeness that is heightened by our almost startling return to a different world when *Himalaya* is over.

I admire Ben Kingsley. Usually. The man who gave his performances in *Gandhi* and *Schindler's List* and *Pascali's Island* and *Betrayal* is more than an adroit wizard of manner and movement: he is an artist who begins his work on a role by doing nothing (I'd bet) other than sitting and thinking about it—who the character is and why he does what he does. (This applies even to the lesser films that Kingsley has been in.) Then, and only then, come the ways in which the character behaves. Supervening all this is Kingsley's power of concentration, of eliminating everything from his being but that man in that moment.

It is thus a matter of conscience for me to report a Kingsley disappointment. In **Sexy Beast** (Fox Searchlight), a crime film whose title seems to have been a belated afterthought, he plays an English gang leader, smooth but basically vicious. For this role Kingsley has shaved his head and grown a moustache and goatee: the baldness helps, the hair does not. But the real trouble is that, though this happens rarely with Kingsley, his performance seems based only on the many such characters he must have seen in films of the past. The role is itself a cliché, and for that very reason we had the right to expect that Kingsley, a true actor, would find not some superficial trick like blowing bubble gum, but some validity for this man's existence. But nothing in Kingsley's gangster—body tensions, timing, gesture, intonation—individuates the role.

The best that can be said for his performance is that, in a film stitched in triteness, it is not egregious. In this screenplay by Louis Mellis and David Scinto, a pair of middle-aged English criminals have retired with their women to the Spanish sun. Kingsley, a former chief of theirs, frightens them by turning up and demanding that one of them, played by Ray Winstone, come back to London to help with a heist. Pressures are applied, Winstone returns, very predictable unexpected things happen, and the story winds to its pseudo-ironic end. It



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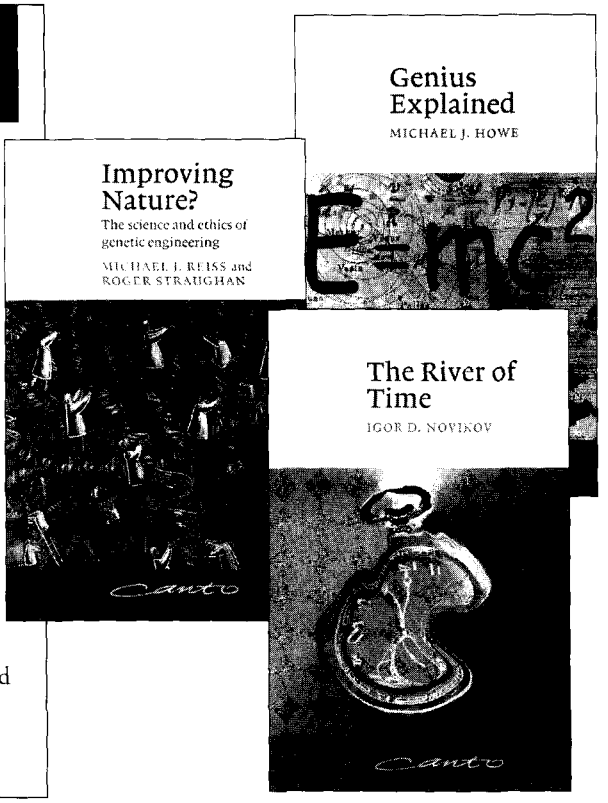


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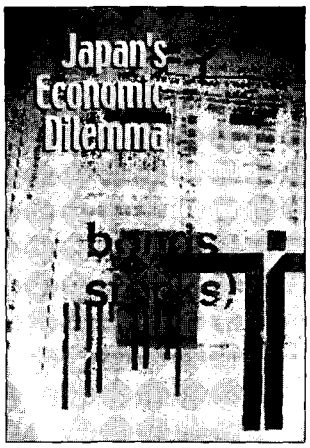


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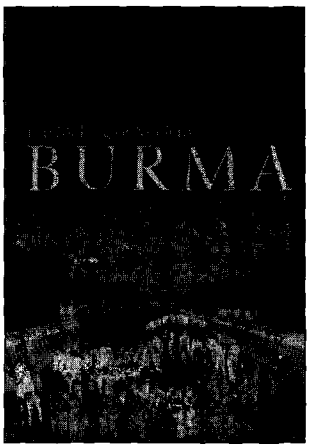


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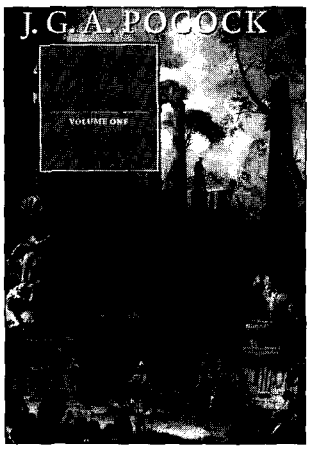


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is all James M. Cain out of the freezer, Anglicized and trudged through.

Stylization was apparently the aim of the first-time director, Jonathan Glazer. As soon as he learns that there is more to style than overhead shots and innumerable huge close-ups, he may get somewhere. As for Kingsley, who apparently wanted to test himself in an offbeat role, we can hope that he keeps this aim but gets the material his talent deserves, and then really uses that talent. ■

# Robert Brustein on Theater

## The Harrowing of Hell

THE COMPOSER Philip Glass, who (along with his former wife and frequent collaborator JoAnne Akalaitis) helped found the experimental theater company Mabou Mines, has worked in a large variety of musical forms. But to me he has always seemed happiest as a composer for dance and theater. Indeed, despite all the warm ink that is usually poured over the achievements of Stephen Sondheim, I suspect posterity will determine that it was the more critically abused Glass who created the most important American music-theater works of the late twentieth century.

Sondheim writes musicals that sometimes (such as *Sweeney Todd* and *Passion*) aspire to be grand opera. Glass writes operas that look more like pieces for the legitimate theater—never musicals, to be sure, but musical works that are inseparably linked to the instrumentalities of the stage. In *Einstein on the Beach* (1976), *Satyagraha* (1980), *The Photographer* (1982), *the CIVIL warS* (1983), *Akhnaten* (1984), *The Juniper Tree* (written with Robert Moran in 1985), *The Fall of the House of Usher* (1988), and his Cocteau trilogy—the stage opera *Orphée* (1993), the film opera *La Belle et le Bête* (1994), and the dance opera *Les Enfants Terribles* (1996)—Glass has experimented with a number of stage forms and ambitious texts in collaboration with some of the most accomplished theater artists of our time. In the interests of full disclosure, I should say that some of these collaborations have taken place at my own theater, so you are free to question the disinterestedness of my opinions. Braving this, I would argue that, in the company of Robert Wilson, Andrei Serban, Richard Foreman, Allen Ginsberg, Doris Lessing, David Henry Hwang, Robert Israel, Francesca Zambello, and others, Philip Glass has fashioned stage works that have helped to transform American musical theater.

His "pocket opera" **In the Penal Colony**, based on Kafka's novella, will probably rank among the more powerful of these, though it makes no particularly new musical departures. That Glass repeats himself often is an often-repeated charge, one he vigorously denies. ("They say my music never changes," goes his usual mantra. "It's always changing.") Glass's defense may seem disingenuous, considering how often, by design, the same thematic and harmonic patterns recur within the same piece, and sometimes even travel from one piece to another. But Glass defines change in terms of the infinitesimal variations common to Eastern music, and that kind of change may be too subtle for our Western ears. On the other hand, it may not be important that each Glass piece be written in a different style or even carry different rhythms and melodies. This would seem to be especially true for Glass's theater music, since its purpose is to build an emotional, sometimes hypnotic foundation for the texts, and this function is actually reinforced through repetition.

*In the Penal Colony* certainly sounds a lot like some of Glass's more recent compositions. What is unusual about it is the instrumentation. To my knowledge, this is the first Glass opera to be played by a classical string quintet (two violins, a viola, a cello, and a bass), and the combination of Glass's music and the traditional instrumentation sounds like Schubert stoned on *bhang*. But most of the responsibility for the hallucinatory nature of the evening belongs to Kafka, whose various works comprise a single metaphor of persecution. Rudolph Wurlitzer—a novelist (*Nog*), playwright (*Waiting Hexagram*), screenwriter (*Two-Lane Blacktop*), and non-fiction writer (*Hard Travel to Sacred Places*)—has deftly transformed Kafka's narrative into a strong libretto, while Akalaitis, Glass's director, has inserted the presence of Kafka himself, who reads from his diaries and sometimes copies the behavior of the condemned man in the prison as if he were his double. The actor Jesse J. Perez plays Kafka as a kind of wizened and spastic child in the throes of what appears to be an advanced case of Parkinson's disease.

It is the black-suited body of the writer on a bed of pain that the audience first sees upon entering the theater of the Classic Stage Company. Kafka is talking to himself in muted undertones. "I write out of despair over my body and my future in my body," he mutters, bemoaning "the terrible uncertainty of my inner existence." In John Conklin's imaginative low-tech setting, the floor is covered with scrawled lines from Kafka's writings. And as his bizarre tale unfolds—the story of a prisoner condemned to be executed by means of a particularly gruesome piece of machinery—Kafka begins to lose control of his right hand, which twitches with a life of its own, like the character in Sherwood Anderson's story "Hands."

"Strindberg is tremendous," Kafka remarks at one point, a testimonial that Akalaitis endorses through her directorial style: the entire performance is staged like a Strindberg chamber play for the Intimate Theater. Indeed, much of it is enacted less than three feet from the audience, so that we, too, are in the penal colony. When the Condemned Man (Steven Rishard) is dragged onstage by a rope, shackled and manacled, the female cellist nearly weeps for him, like the Daughter of Indra in *A Dream Play*. When the Officer begins to describe the monstrous, infernal machine that will execute the Condemned Man, Kafka first draws the machine, then tears up his sketch and eats it. In short, this is a phantasmagoric world of dreams and nightmares at the center of which is the "apparatus"—a harrow with two sets of needles, one designed to write on a man's body, the other to wash away the blood, until the coup de grâce is delivered with a spike through the head.

This process is described at length by the Officer (played by the basso Herbert Perry on the night that I saw the work) to a Visitor from a foreign country (played by the tenor Tony Boutté on the same night). Although he has been charged with insubordination, the Condemned Man does not know his sentence. "He will experience it on his body," the Officer explains. The process is not designed to kill the prisoner right away—it will take twelve hours for him to "achieve enlightenment." This is prosaic (as opposed to poetic) justice, and it is administered in much the same



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mechanical way as a set of needles transcribes the results of an EKG, only the medium here is not a paper chart but a man's flesh.

The Officer is eager to enlist the Visitor's support for this traditional system of justice, since the new Commander opposes his predecessor's methods. But the Visitor clearly disapproves of it as a vestige of an old, barbaric regime. For a moment, there is a question of whether he will express his disapproval or withdraw into liberal neutrality. When he decides for the former, the Officer frees the Condemned Man, orders his own uniform to be stripped from him, and takes his place on the apparatus, where the words "Be Thou Just" are inscribed on his body before he dies. The Officer's execution is a spectacular sound-and-light show designed by Jennifer Tipton on Conklin's apparatus of gears and wheels, after which Kafka puts on his bowler, grabs his umbrella, and leaves the Visitor with the words "Have faith and abide." The intimacy of the space, the thrust of the narrative, the shimmering arpeggios of the score, and the power of the performances are the only qualities that sustain the faith of the audience, which would otherwise be shattered by this myth of infinite cruelty and despair.

*In the Penal Colony* was written in 1914, the same year that Kafka began *The Trial*. It is now abundantly clear that the writer's ideas about inhumane prison systems and torture machines, about irrational legal procedures and implacable bureaucracies, and (in the case of *Metamorphosis*) about the possibility of human mutation—ideas that some at the time considered paranoid fantasies—were remarkably prescient. Not only did Kafka foretell the inhumanity of Nazi medical experimentation and extermination camps, he even told us something about the barbaric American rite of capital punishment. (By chance, I saw this production two days before the execution of Timothy McVeigh.) Whenever you see it, *In the Penal Colony* will, as Horatio says about the ghost of Hamlet's father, harrow you with fear and wonder.

## Eudalia and Plato

The Dutch have been growing tulips since 1500.
There are eight thousand tulips in one Dutch field.
Every century is full of lovers; so it's not to worry.

Clouds drift over the sea when the wind blows.
Dickens knew there are lovers even in the Law Courts—
The lovers without lawyers receive vast settlements.

The lovers' books are always open to Inspection.
We can see Romeo and Juliet in the tomb,
And paintings of tiny ships in Divine Waters.

Always the lover's body is saving and spending.
During the day its donkey gathers thousands of pearls.
Then at night it spends all that the earth has saved.

Eudalia will not allow Plato to come near
The Garden of Lovers because Eudalia knows
He, being lofty, is afraid of the glory of ruin.

I know how much ruin love can bring.
But at night I hang around the orchard
Hoping to catch one breath from the lovers' tree.

**Robert Bly**

Speaking of **Hamlet**, a word about the two vastly different productions of the play recently imported to these shores by the Brooklyn Academy of Music. (The last dueling *Hamlets* I can remember in New York were in the late 1930s, when John Gielgud and Leslie Howard simultaneously played the part on Broadway.) It is telling that one of these *Hamlets* is identified with its director, Peter Brook, and the other with its lead actor, Simon Russell Beale—which reflects the fact that one is driven primarily by concept, the other primarily by performance.

Peter Brook's version, with the fine actor Adrian Lester in the lead, is—though far superior to the competition—something of a disappointment. Brook is continuing to explore how to distill theater down to its essentials. With Fortinbras and Norway on the cutting-room floor, the play has been reduced to about two and a half hours (with no intermission—Brook still expects his audiences to suffer a little for his sins). It is performed on an orange carpet decked out with pillows, and it is accompanied by bells, horns, and whistles, Asian-style. This is appropriate, since about half the members of the multinational cast are from the Indian subcontinent. When not in the scene (i.e., acting on the carpet), they sit around the stage, watching and meditating.

Brook's approach achieves intimacy, clarity, and simplicity, though it begins to seem a bit self-conscious after a while. Moreover, the mixture of styles and nationalities does not always blend with perfect consistency. Jeffrey Kissoon (doubling as the Ghost) plays Claudius like an Eastern potentate, but Natasha Parry's Gertrude is a well-mannered London matron who would have been more at home in the Simon Russell Beale production.

As for Lester's Hamlet, he is always engaging, if not always very deep. "I have of late . . . lost all my mirth," Hamlet says, but there is no mirth lost in Lester's continually waggish and spry performance. This Hamlet is very good at making fun of himself, particularly after revealing some emotion in a soliloquy. He even dies with a smile on his face, finding real amusement in the line "The rest is silence."

The play has obviously been re-interpreted from the ground up, with every word examined anew. Some of Brook's ideas are questionable, such as moving the "To be or not to be" soliloquy to a later point in the play, after Hamlet has already determined to kill the king. Others, such as the erotic treatment of Ophelia's madness, in which she obsesses on the phrase "by cock," are more effective. The play ends where it began, with all the dead getting up to look at "the morn in russet mantle clad," and a guard crying, "Who's there?" These are good actors, not great actors, rethinking a hallowed play.

The Simon Russell Beale version (directed by John Caird with the Royal National Theatre Company) also gets rid of Fortinbras and Norway, though it still clocks in at almost three and a half hours. I saw the production at the Wilbur Theater in Boston, where it was much admired before being enshrined later at BAM. It was like watching a historical re-enactment of a nineteenth-century actor-manager Shakespeare production, in which the star upstages the supporting actors and never lets the audience out of his eyesight or earshot. With a few exceptions, Beale's supporting cast was execrable: almost all of the actors sounded like BBC announcers or gay Oxford dons, including the women. And the setting, consisting of trunks and luggage piled around the back of the stage as if it were the waiting room at Paddington, suggested that the only concept behind this production was the idea of touring it.

While always clear-spoken and intelligent, Beale is obviously too portly for the role (yes, Gertrude mentions that Hamlet is "fat, and scant of breath," but this is ridiculous). He is also too short, too middle-aged, and too epicene to be the



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scholar, soldier, and courtier that Ophelia admires—well, maybe he could pass for a courtier and double as Osric. It is true that a good actor can make you forget about his physical appearance. What Beale never lets you forget is his superior sense of scornfulness, as if he were confusing his character with the caustic Addison de Witt in *All About Eve*. And underneath the upper-class disdain you can just perceive a credit-card-carrying member of the consumer classes. As a result, while Beale captures the cuttingly ironic and quotidian aspects of the role, he never touches its tragic side.

In this he is well-matched by the well-bred Cathryn Bradshaw, whose Ophelia, always clutching her pocketbook even in the mad scenes, resembles a chubby debutante driven around the bend by the frustrations of a bad perm, a bad diet, and too much time spent in department stores. As for sex appeal, there is not a corpuscle of chemistry between them, and I cannot say that it is all Beale's fault. (He seems more attracted to Sara Kestelman, who plays Gertrude like a near relative of Edna May Oliver.) If the purpose of acting, as Hamlet says, is to show "the very age and body of the time his form and pressure," to judge by this production our time is afflicted with considerable sexual uncertainty and a lot of class pretension. ■

# Martin Filler on Architecture

## The Spirit of '76

TWENTY-FIVE YEARS ago, during the bicentennial of American independence, it became clear that a cultural revolution was brewing in this country. The entrenched modern architectural establishment—epitomized by the corporate colossus of Skidmore, Owings & Merrill, with offices in New York, Chicago, and San Francisco—began to be challenged by a new generation of upstarts who demanded a wholly other way of conceiving and making buildings. The late, corporate version of the International Style as it was perfected and marketed by SOM was rational, adaptable, cost-effective, and tasteful; and it won such widespread approval that many thought it marked the absolute end of architectural evolution. How could that ruling class of architects ever be overthrown by a renegade band of amateur philosophers and impudent pamphleteers?

The Tom Paine of that unlikely uprising was the Philadelphia-based Robert Venturi, whose broadside against the status quo, *Complexity and Contradiction in Architecture*, had appeared a decade earlier, and was truly the equivalent of *The Rights of Man* in the building art. That last word—art—is essential, for Venturi's central proposal was to return architecture, which after World War II had come to be seen as a technocratic profession more allied to structural engineering and efficiency management, to its ancient roots as Mother of the Arts. "Architects can no longer afford to be intimidated by the puritanically moral language of orthodox Modern architecture," he declared. "I am for messy vitality over obvious unity. I include the non sequitur and proclaim the duality."

A very similar point of view was held by Venturi's somewhat younger contemporary, the Los Angeles-based architect Frank Gehry. Though neither a writer nor an intellectual like Venturi, Gehry was to have an equally crucial role in the gathering rebellion. After years of schlepping along as a much-better-than-average commercial architect, he yearned to reposition himself as an artist. He took his primary cues from contemporary painters and sculptors, rather than from the more learned continuum of art and architectural history that informed the scholarly Venturi.

The two men and their work are different in many respects, but their shared affinity for a revolution against high architectural modernism makes it entirely appropriate that they (and Denise Scott Brown, Venturi's partner and wife) are now the subjects of simultaneous museum retrospectives. "Out of the Ordinary: The Architecture and Design of Robert Venturi, Denise Scott Brown and Associates" is now at the Philadelphia Museum of Art, and "Frank Gehry, Architect" is now at the Solomon R. Guggenheim Museum in New York. These shows pay much-deserved homage to the philosophically disparate but artistically commensurate figures who stand together at the summit of contemporary American architecture.

IN THE LATE 1970s, when I was a young editor at *Progressive Architecture* magazine, my colleagues and I tried to predict who would become the heir to Louis Kahn, who had died not long before but was already acknowledged as the spiritual (if not the stylistic) successor to Frank Lloyd Wright. We knew it would not be Philip Johnson, Kahn's media-savvy near-contemporary: he certainly bridged the gap between the establishment and the art world, but he lacked the necessary gravitas to be taken seriously as our philosopher-king. Venturi and Gehry were our personal favorites at *P/A*. (Scott Brown was then regarded as her husband's lesser partner—he the creative genius, she the office manager; and this sexist prejudice still persists in many quarters, where she is commonly stereotyped as Venturi's urban planning specialist, strategist, and in-house critic. In fact she is also a creative designer of great skill, especially on the firm's big campus projects.) But all our enthusiasm notwithstanding, it seemed most unlikely that those provocateurs would ever make it to the big time.

By 1976, Venturi and Scott Brown had been well known for a decade, not only for their writings but also for such seminal works as the Vanna Venturi House of 1959–1964 in Chestnut Hill, Pennsylvania. Built for the architect's mother, this small but consequential structure caused a sensation in modernist circles, owing to its pitched roof and applied ornament. Yet the couple's Pop Art approach began to seem dated as younger art-oriented architects in the United States and Japan paid closer attention to the minimalist sculpture of Sol LeWitt and Donald Judd than to the paintings of Roy Lichtenstein and Jasper Johns, Venturi and Scott Brown's closest artistic analogues. Moreover, much of the goodwill engendered by Venturi's elegantly argued *Complexity and Contradiction in Architecture* had been undone by the far more shocking *Learning From Las Vegas*, which he wrote in 1972 with Scott Brown and their longtime collaborator Steven Izenour.

That seemingly outrageous but carefully researched Pop polemic asserted that America's crassest commercial excrescence, the *locus classicus* of the culture's basest instincts, was a worthy model for serious civic design. "There is a perversity in the learning process," the authors acknowledged about their choice of Sin



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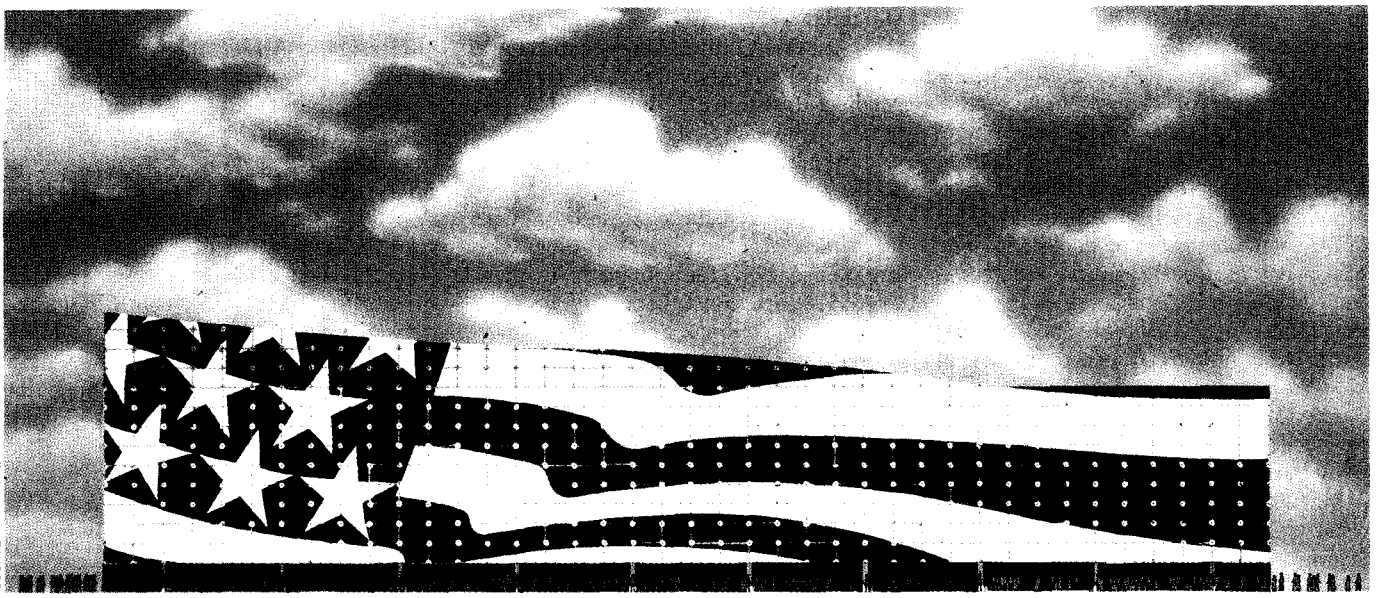

COURTESY VENTURI, SCOTT BROWN AND ASSOCIATES

Venturi, Scott Brown and Associates, United States Pavilion, Expo '92, Seville

City as an urbanistic paragon, which grew out of a studio course they taught at Yale in the *annus horribilis* of 1968. "We look backward at history and tradition to go forward; we can also look downward to go upward." This notion was not received enthusiastically at a time when America's beleaguered cities appeared to be tottering on the brink of doom.

WHO IN THOSE days could have dreamed that one day Venturi and Scott Brown would add a wing to Britain's National Gallery (it opened in 1991 and remains their masterpiece), or build a governmental complex in France (the Hôtel du Département de la Haute-Garônne of 1990–1999 in Toulouse), or become the presiding experts on American university architecture and planning? Their less overtly confrontational contemporaries—including the tradition-minded Charles Moore and Michael Graves, and also Richard Meier and Peter Eisenman, who looked back to the heroic phase of early modernism—seemed much more likely to reach the top. But one by one, time took its toll on those lesser contenders.

Moore, as extravagantly gifted and deeply cultivated as his exact contemporary Venturi (to say nothing of his being an equally beautiful writer and a charismatic teacher), suffered from what grade-school report cards used to call a lack of application. Easily bored, he set up a series of collaborative firms across the country and then flitted among them, never alighting long enough to achieve much of lasting value. Worn down by his nomadic compulsion, beset by health problems, and lacking anything approaching a supportive private life, he died in 1993 without fully realizing his considerable potential. If Moore was not quite a burned-out case, his once refulgent light flickered only dimly in his sad last years.

Meier, after a brilliant early series of neo-Corbusian houses, fell victim to the paralyzing fear that afflicts many careerist artists after initial success. Caution and repetition supplanted the audacity and the variety of his youthful schemes, and he morphed into his generation's equivalent of I.M. Pei, a smooth purveyor of safe academic modernism to the international power elite. Meier's fate was sealed by the ultimate answered prayer of late-twentieth-century architecture: the universally coveted but finally disastrous commission for the J. Paul Getty Museum in Los Angeles. Too big and protracted to be dismissed as a mere aberration, that thirteen-year, billion-dollar, committee-dominated boondoggle tethered Meier's creative abilities during the mature phase in his development, when his powers should have been allowed to soar.

Eisenman, who is Meier's second cousin, was so neurotically insecure about his abilities that he sought to hide them within the dense carapace of arcane theory. Turning with promiscuous abandon from Chomsky to Derrida to Bakhtin to Deleuze as a means of justifying his designs, he has kept up a nimble and unending sarabande to remain one step ahead of the intellectual fraud squad. That his few executed buildings do not live up to his over-strenuous rationales—the Wexner Center for the Arts at Ohio State University in Columbus is a notoriously terrible showcase for anything other than its designer's ego—has somehow escaped the attention of those still taken in by his obscurantist patter.

Graves, with his seductive drawings and his heart-rending pitches on behalf of a new architecture of humanism, seemed destined to reach a far wider audience than any of his confrères. He did so, but at an awful cost to his stature as an artist. His convincing early hybrids of modernism and classicism pointed to a synthetic middle ground that, in retrospect, ought to have warned us that this was not the man to pin our hopes on. But the rest of the Graves story came as something of a surprise: his eager deliquescence into the facile stylist of dubious household objects (his ghastly Alessi teapot is one of the plagues of late-twentieth-century design) and of buildings as Disneyfied as his tchotchkes. This kitschy decline really was unexpected.

Which leaves Venturi, Scott Brown, and Gehry. On the surface, certainly, these figures seem to have little in common. Gehry is not at all interested in the archetypal signs and symbols that are central to Venturi and Scott Brown's work. (Except, of course, for Gehry's recurrent fish motif, emblematic of everything from his grandmother's gefilte to the life force itself.) Whereas Venturi and Scott Brown search for the familiar, Gehry searches for the unfamiliar. This makes some people think that they have seen the couple's iconic work before, though nobody will ever say that about Gehry's highly idiosyncratic conjurings; and this disparity accounts for the differing demand for their respective services today. But the mere fact that these polar opposites can be esteemed as artistic equals is proof of the triumph of pluralism after the demise of the late modernist monoculture.

The billboard-like flatness that Venturi and Scott Brown achieve in their self-described "decorated sheds" is the antithesis of what Scott Brown christened the "duck," an assertively sculptural structure



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in the manner of the Big Duck, a 1930s roadside poultry stand on Long Island. By that definition, the voluptuous three-dimensionality of Gehry's architecture, epitomized by his epochal Guggenheim Museum Bilbao (which has been likened to a giant fish and a huge artichoke, among other things), makes him today's quintessential master of ducks. But one thing that unites these three masters is their having flourished in cities far more hospitable to artist-architects than the cutthroat commercial environments of New York and Chicago.

VENTURI AND SCOTT BROWN are the present-day equivalents of Philadelphia's earlier architectural geniuses, the Victorian Gothicist Frank Furness and the New Brutalist Louis Kahn. Those two precursors were both fragile souls. Furness, supported by adventurous hometown clients who understood his project to remake the post-Civil War City of Brotherly Love in terms of Lincoln's "new birth of freedom," enjoyed an enlightened patronage equaled at the time in this country only by his great contemporary H. H. Richardson. Rejecting the Eurocentric eclecticism of the Gilded Age, Furness devised a vigorously contemporary American style that transformed Gothic and Neo-Grec motifs with a boldness entirely his own, and he made structures reminiscent of no other time or place.

Furness's defiantly anti-classical University of Pennsylvania Library of 1888–1891 is one of the most memorable college buildings of the nineteenth century. But architectural fashion shifted toward academic classicism in the wake of the World's Columbian Exposition of 1893 in Chicago, and Furness was reduced to penury. He ended his career ghost-designing McKim, Mead & White's white marble mini-pantheon for the Girard Bank on Philadelphia's Broad Street, just blocks away from his robustly patterned and polychromed Pennsylvania Academy of Fine Arts of 1871–1876.

Kahn was far luckier than Furness. By the time of his death, in 1974, he was revered by many as the living god of architecture, a perception that he actively encouraged with his quasi-mystical pronouncements. His elevated view of the architect as artist—all who follow are indebted to him for the restoration of that ideal—led to his extraordinary late series of commissions in India and Bangladesh. (His project for the latter was the finest national-capital governmental building of the twentieth century.) But before he enjoyed global acclaim he received fundamental support back home, and Philadelphia continued to serve as a kind of sheltered workshop for him. Small local jobs sustained him through his frequent dry spells, and later the A. N. Richards Medical Research Building of 1957–1965 at the University of Pennsylvania was exceptionally important in furthering his wider reputation.

Odd-looking, disheveled, and eccentric, a *Luftmensch* if there ever was one, Kahn could never hope for a mainstream clientele. His core constituency became the cultural, educational, and religious institutions that regarded him as an artist, rather than the corporate world that would never understand him. And this is precisely what has happened to Venturi and Scott Brown. At the very height of his powers, this greatest of all postwar architects lost the prestigious commission for the John F. Kennedy Library because Jackie Kennedy was grossed out by his slovenly office and her brother-in-law Robert Kennedy, that great intellectual, interpreted Kahn's ruminations as the ravings of a madman. Don't let it be forgot.

IN 1950, KAHN sat on the Princeton Architecture School master's thesis jury of the twenty-five-year-old Robert Venturi, a fellow Philadelphian who later became Kahn's teaching assistant at the University of Pennsylvania, and then worked in Kahn's office on and off until he set up his own practice in 1957. Though Kahn understandably had a strong impact on Venturi, as he did on an entire generation of architects, the circulation of ideas in this case went both ways. Venturi's two study sojourns in Rome bracketed Kahn's own pivotal stay there in 1950 and 1951, and the younger man was instrumental in suggesting to his elder how to channel the lessons of history into a truly contemporary architecture. So who deserved the credit for these conceptual innovations? The question eventually became a vexed issue between them. As David B. Brownlee (one of the organizers of the present Philadelphia show, with David G. DeLong and Kathryn B. Hiesinger) writes in the informative but insufficiently critical exhibition catalog, Venturi's "natural sensitivity about Kahn's appropriation of ideas from all of his associates led to later tension."

Like their great mentor, Venturi and Scott Brown (she also studied with Kahn, at Penn) were wise to remain in Philadelphia, especially after the siren song of fame sounded. They, too, have built extensively in the city and its environs. The initially controversial but hugely influential Guild House of 1961–1966, old folks' housing specifically designed to be "ugly and ordinary" in concert with its low-key center-city surroundings, is now included in most histories of twentieth-century architecture. Their raucously Pop strip-mall superstores of the 1970s for the Basco and Best Products companies in the city's northeast suburbs demonstrated how high-style architects can trounce the commercial hegemony at its own game. And their four major commissions on the Penn campus fittingly include a splendid restoration of Furness's library. (They helped to save that despised relic in 1960, after two superb Furness buildings were demolished as part of Philadelphia city planner Edmund Bacon's demented scheme to remake the area around Independence Hall into a pseudo-Colonial, Victorian-free zone.)

IF VENTURI AND Scott Brown are not prophets without honor in their own country, they have endured many disappointments, locally and nationally. This makes their retrospective a rather bittersweet affair. No top-tier architectural firm of our time has more first-rate unbuilt work in its archives. Among the many lost opportunities spanning four decades are the brilliant, first-prize-winning entry in the Yale University Mathematics Building competition of 1969–1970, and two equally excellent proposals of 1992–1996 for the Whitehall Ferry Terminal at the tip of Manhattan, one dominated by a colossal clock face, the other by a vast liquid electronic display (LED) screen.

The most hurtful recent rejections happened at home: the wresting away of their commission for Philadelphia Orchestra Hall, on which they worked from 1987 to 1996. Intended to supersede Napoleon Le Brun and Gustavus Runge's Academy of Music of 1855–1857 just north of the new site on Broad Street, the new design was a typical Venturi and Scott Brown decorated shed. Owing to the small initial budget, the architects warned the client that the building would have to be less a Baroque opera house and more a Friends meeting house, which was an appropriate aesthetic for the Quaker City. The façade of the final version was to be patterned with a lively composition of overlapping grids and pediment-like diagonals, in turn overlaid and underlined with a capricious, billboard-like frieze of super-scale musical notation from Beethoven's *Moonlight Sonata*.

After almost a decade of delays and revisions, the client bowed to the demands of Sidney Kimmel, a Philadelphia garmento who contributed $15 million toward the $258 million project (a proportion that would never have given him such clout in New York). Kimmel found the Venturi and Scott Brown scheme too commercial-looking (this is often a sticking point for those who make their money in commerce), and instead he wanted a



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building that looked more like the New York Post Office, which is being transformed by David Childs of SOM into the new Pennsylvania Station. Thanks to a philistine donor, then, the city's most distinguished architects since Kahn were sacked in favor of the second-rate Argentinian Rafael Viñoly. His scheme, with a sequentially arched steel-and-glass roof recalling not the New York Post Office but Philadelphia's nineteenth-century Reading Railroad Terminal, is both incongruous in conception and cheesy in execution. Now nearing completion, the Kimmel Center for the Performing Arts, as it has been renamed, offers depressing evidence of Philadelphia's inexplicable lack of aesthetic self-confidence, given its grand architectural heritage.

FRANK GEHRY HAS experienced similar splendors and miseries in Los Angeles, where he moved with his family as a teenager from his birthplace of Toronto. For a hundred years now, the City of Angels has been traditionally hospitable to innovative architectural talent. Its progressive patrons sponsored the exquisitely crafted bungalows of Greene & Greene, accepted the revolutionary minimalism of Irving Gill, nurtured Frank Lloyd Wright during his desert years, welcomed the émigrés Rudolph Schindler and Richard Neutra, supported the polymathic Charles and Ray Eames, and encouraged countless young talents in more recent decades. The city's adventurous attitude toward architecture is part of Southern California's broad tolerance for social experimentation, and it is abetted by a generally benign climate that allows less costly building materials and construction techniques. The architecture of Los Angeles is the strongest evidence that high art has long prospered in that alleged cultural wasteland.

Another parallel between Gehry and Venturi-Scott Brown is their shared interest in establishing a strong sense of place. The interchangeability of so much International Style architecture, which gave cities around the world a depressing sameness by 1976, inspired these designers to emphasize the existing particularities of the locales in which they built. Venturi's dictum that "Main Street is almost all right" made it completely all right to value the ordinary, though he and Scott Brown found much to learn from wherever they looked, from the Piazza San Marco to Shinjuku to South Philly. Refusing to presuppose that high-style architects have more understanding of the *genius loci* than vernacular builders, the couple redirected the course of American architecture in a profound way that none of their peers, including Gehry, has yet to achieve.

Working primarily amid the amorphous sprawl of Los Angeles early in his career, Gehry faced a very different problem in the creation of place. Where no context existed, he would invent it; but he did so without resort to the pseudo-Romanticism endemic to Southern California. He devised clusters of form to center a project around a cohesive outdoor space, such as his village-like campus of 1978 and afterward for the Loyola Law School in an industrial area near downtown Los Angeles, as well as several multi-pavilion houses in the ritzier West Side precincts of Brentwood and Beverly Hills. Initially he employed the same low-grade materials that he saw around his office in the city's Venice section—corrugated steel, unfinished plywood, and, most infamously, chain-link fencing; but low budgets rather than low taste dictated their use.

From the late 1960s onward, Gehry's increasing contacts with such Los Angeles artists as Larry Bell, Billy Al Bengston, Ron Davis, Robert Irwin, and Ed Ruscha gave him an entirely new frame of reference for his architectural thinking. Hanging out in their studios, observing their production methods, and collecting their work, Gehry discovered a more intuitive and improvisational way of creating three-dimensional form than he had been taught at the vocationally oriented architecture school at the University of Southern California.

A major sign of Gehry's shifting sensibility was his studio and house for Ron Davis of 1968–1972 in Malibu, which was in effect a large corrugated-steel sculpture that explored the same themes of volume and point perspective that the client was pursuing in his own art at the time. This breakthrough project was chosen, with good reason, to open the current Guggenheim retrospective as opus one of Gehry the artist.

And even earlier Gehry had already embarked on an imaginative series of exhibition installations for Los Angeles-area institutions. His unconventional but sympathetic mountings for everything from the King Tut show and classical Japanese art to Russian Deconstructivism (a style with which his own work has close affinities) and American art of the 1960s brought him in closer contact with the museum establishment. It came as a tremendous blow, therefore, when Gehry lost the commission for the Los Angeles Museum of Contemporary Art (MOCA) to Arata Isozaki. The Japanese postmodernist was selected in 1981 because the project's backers wanted a foreign architect, to signal that they had international ambitions rather than merely regional


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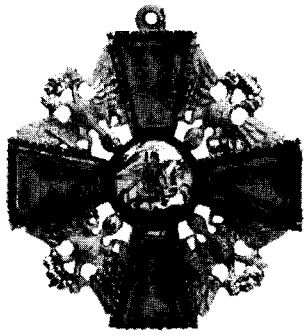

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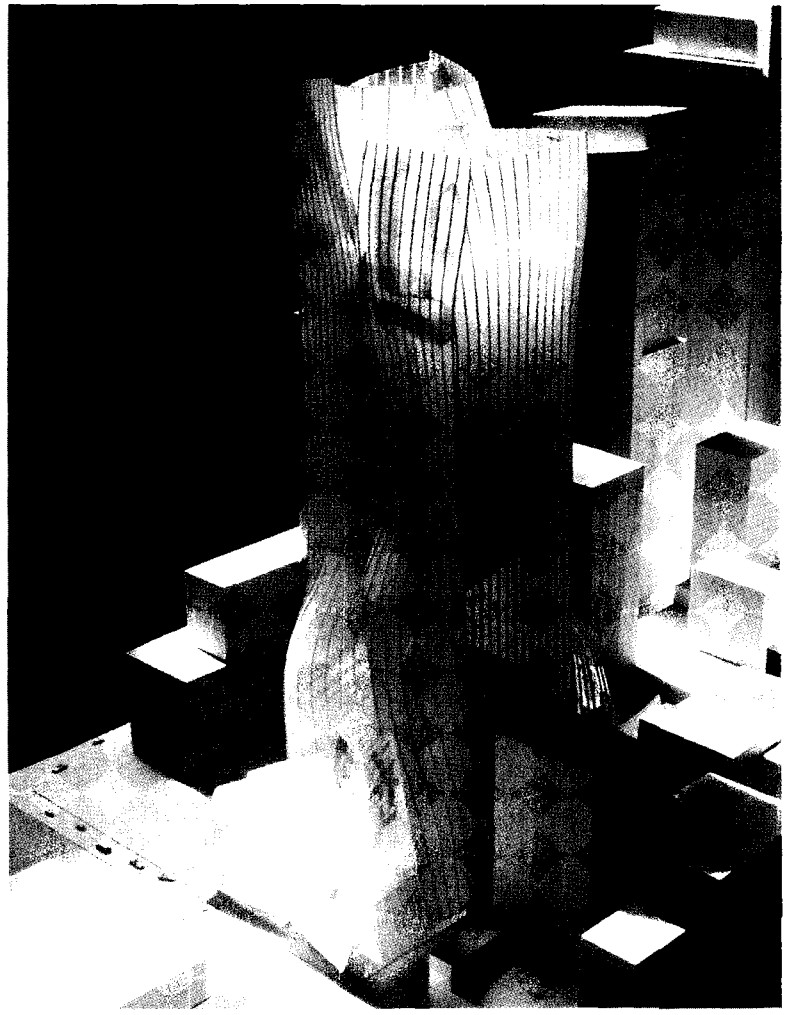
ones. Gehry felt particularly betrayed by some of the very artists he had befriended, who had denigrated him during consultations with the client. In the process, Los Angeles, like Philadelphia, snubbed the leading artist in its midst.

In a fit of remorse, the MOCA board gave Gehry a consolation job, asking him to renovate two nearby warehouses into the Temporary Contemporary. This proved so much more popular with critics and the public—who responded to Gehry's gritty, expansive space as a hipper setting for new art than Isozaki's uptight, compartmentalized main building—that it has been retained as a permanent facility. Several years later the San Francisco Museum of Modern Art compounded California's shame by passing Gehry over, for exactly the same reasons as MOCA, in favor of the then-trendy Swiss architect Mario Botta, who gave that city a thoroughly dreadful building.

Gehry's music-world equivalent to Venturi and Scott Brown's Philadelphia Orchestra Hall debacle (though one with an apparently happier ending) has been the ongoing fourteen-year struggle to bring the Walt Disney Concert Hall in downtown Los Angeles to completion. This new home for the Los Angeles Philharmonic got bogged down in endless delays (resulting in skyrocketing cost estimates) because local contractors could not make sense of the architect's computer-generated construction documents. Never mind that his equally experimental and complex Bilbao museum zoomed to completion with astonishing ease not long after American builders scratched their heads in puzzlement over the Disney job.

Dismayed by the ever-growing bottom line, Lillian Disney, the fabled animator's widow and the project's chief benefactor, put the project on hold. It took the stupefying reception of Bilbao to shame Los Angeles officials into getting the building back on track, for they were justly fearful of how they would look in the cold light of art history if they let this opportunity slip from their grasp. They were right to do so, for this is by far the strongest of Gehry's post-Bilbao designs, and it seems certain to answer the question of where the architect could possibly go after reaching the apex of his career. A lilting and harmonious composition of swelling trapezoids, Disney Hall does something entirely different from the unfurling swirls of the Bilbao style. The Basque branch of the Guggenheim, as this show and its venue remind us, is both Gehry's blessing and his curse, for it has become more and more difficult to see his broader contributions beyond that single, blinding work.



COURTESY GUGGENHEIM MUSEUM

Frank Gehry/David Childs, final competition model, New York Times Headquarters, 2000

You would know none of this from the Guggenheim's visually stunning but intellectually uncritical survey of Gehry's career, or from the handsome accompanying catalog. Although it is not to be expected that unpleasant architect-client conflicts be fully aired while a commission is still under way, some discreet explanatory background on the Disney saga would have made it clearer to the average viewer why this scheme has gone through so many changes. It is like that all the way through this excessively breathless show.

Gehry's astounding design for the New York Times Headquarters of 2000 is easily the most exciting high-rise scheme in recent memory, and it is certainly far superior to the proposal by Renzo Piano that was ultimately chosen. Piano's dry and delicate design will be pulverized by its tough Midtown West context. A wall label at the Guggenheim and an entry in the catalog report that Gehry and his New York-based associate architect David Childs withdrew from the project. It would have been instructive for the public to know that the team did so because they doubted that the client's real estate developer would give them sufficient artistic control.

And entirely missing from the exhibition is Gehry's American Center of 1990–1994 in Paris. That $41 million scheme came in way over initial estimates (a host of programmatic extras was constantly being added), but the ambitious client gambled that the Gehry label would attract large donations to cover the shortfall. It did not, and the project overextended the small institution so badly that it went broke and closed down a year and a half after the building opened. The Guggenheim's guest curator Mildred Friedman, formerly the architecture curator at the Walker Art Center in Minneapolis, and her husband Martin Friedman, the Walker's longtime director, were both consultants to the American Center, and *undoubtedly she and* Gehry had no wish to revisit that painful episode here. Still, a more insightful exhibition, and one more in tune with this architect's revolutionary nature, would have addressed such issues frankly.

One cannot expect critical distance and intellectual impartiality, I suppose, from a survey that has been put together by the client of both Gehry's masterpiece and the much less thrilling Guggenheim planned for lower Manhattan. (The riverside site of the epigonal spin-off is insufficiently expansive to allow the same dynamic sweep as the Bilbao museum, and the design is not enough of a departure from its famous predecessor to avoid odious comparisons.) "Frank Gehry,



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Architect" thus emits an inevitably promotional air, especially as the museum has done no other architecture exhibitions during the thirteen-year tenure of its director, Thomas Krens. With one double-height gallery devoted exclusively to the downtown Guggenheim models, which were displayed in a separate exhibition at the museum only last year, a curator of another institution felt compelled to observe of the show, with some justification, that "it's an IPO."

Yet whatever his flaws, Krens has a shrewd eye for talent. For this retrospective he was clever to enlist Mildred Friedman, who organized the landmark Gehry exhibition at the Walker in 1986, which was instrumental in cementing Gehry's wider reputation after a decade of cult status among architectural insiders. Friedman is metabolically attuned to her subject's creative processes, and she lends much-needed credibility to what might otherwise have seemed like a cravenly narcissistic exercise.

Gehry's installation design is his second knock-out transformation of the interior of the Wright Rotunda in three years. For "The Art of the Motorcycle" in 1998, he clad the continuous coil of Wright's colossal helix in shiny silver metal, creating a shimmering vortex that reflected the Harleys and other hogs on display. Wright purists were indignant—but let us not forget that the master himself had originally wanted to cover the balconies of Fallingwater with gold leaf.

For the present exhibition, Gehry has devised a dazzling sculpture of huge overlapping lengths of metal mesh suspended like giant insect wings beneath the great dome. This weighty yet diaphanous mobile creates an ever-changing scrim as one moves up or down the ramp, which is chockablock with models—not just the prettified kind made for client presentations, but particularly the raggedy working miniatures with which Gehry thrashes out his real thinking. The models look terrific in Wright's sometimes problematic space, as sculpture consistently does.

Questions of ethics and content aside, the Gehry show at the Guggenheim pulsates with a creative vitality missing from almost all other architecture exhibitions, and transmits the excitement of Gehry's art with a joyous immediacy. One wishes that Venturi and Scott Brown had also been allowed to design the installation of their retrospective, especially as they, like Gehry, have done a number of extraordinary museum mountings over the years. Perhaps the Philadelphia Museum of Art felt that it would be too incestuous to allow the subjects of a show to determine the display of their own work—another scruple that did not faze, or perhaps did not even occur to, Thomas Krens.

As it transpired, Venturi and Scott Brown were wholly responsible for only the opening and closing portions of their show. The billboard-like facing that surrounds the exhibition entrance, emblazoned with the perfectly Venturian double-entendre name "Out of the Ordinary" (dreamed up by Kathryn Hiesinger, the Philadelphia Museum's decorative arts curator), brings to mind the giddy graphics of a circus sideshow. At the very end of the exhibition, the couple has created a work that they call *The Architect's Dream* (after Thomas Cole's architectural fantasy painting of 1840, a giant blowup of which forms the backdrop for one wall of the installation). This is a narrow, high-ceilinged space, the parallel surfaces of which are decorated with overlapping supergraphics as well as inset plasma screens and LEDs, the electronic iconography that the couple has made the focus of their most recent theories and designs.

Arranged thematically by building types rather than chronologically, the show regrettably provides neither a clear through-line nor a coherent overview of the pair's development. The ways in which Venturi and Scott Brown continually find new means to express some of their oldest concerns are not taken full advantage of here. Thus their highly important but unexecuted project for the National Collegiate Football Hall of Fame, done in 1967, has much more to do with their most


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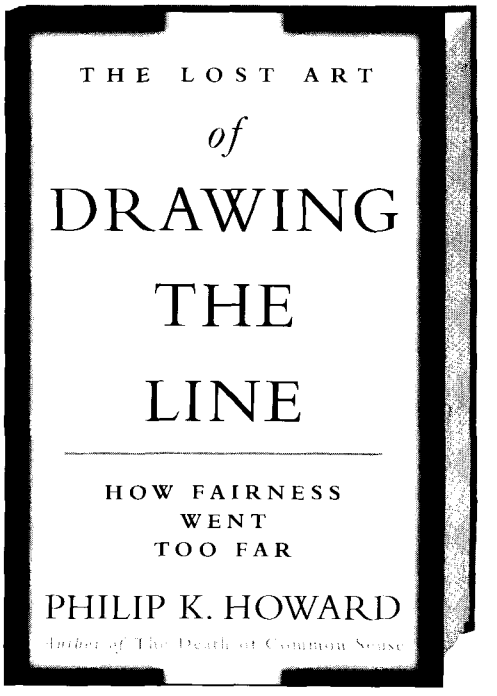


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recent work, though it is positioned at an unilluminating remove from it in this display. Housing schemes with much in common are scattered throughout the show, their assonances lost on all but specialists.

Still, there is much to love in "Out of the Ordinary." As in the New York show, one is overwhelmed in Philadelphia by the sheer inventiveness that has poured from these architects for more than forty years. Venturi was a true prodigy, and his immense talent is clear in his earliest works, whereas Gehry struggled for years before finding his artistic voice. The most obvious difference between the two exhibitions is the dependence of Gehry on models and of Venturi and Scott Brown on drawings. Venturi and Scott Brown's tidy little models are negligible things: that is not where their passion lies. But the glorious swaths of yellow tracing paper on which Venturi impulsively sketches out his ideas are the most gripping architectural renderings since Kahn's drawings, almost frightening in their virtuosity but faultless in their proportional control. (One big surprise in the Philadelphia show is a hitherto unexhibited Scott Brown drawing of 1953–1954, done in what can be seen as a proto-Venturi style, but dating several years before the future partners first met. This should put paid to the persistent notion that Scott Brown cannot draw, and its likeness to some of the firm's later presentation renderings confirms her active role as a design principal.)

These architects' respective representational preferences point not only to their favored modes of design development, but also to the ways in which those media feed into the striking disparity in the built work. Gehry is no draftsman, and such drawings as he produces serve as *aides mémoires* for his later mock-ups. Through his models he seeks extravagant dimensional effects akin to the sculpture of his friend Richard Serra. In their drawings, by contrast, Venturi and Scott Brown seek the flatness and glitter of a mosaic-inlaid Byzantine church façade or a gigawatt Vegas casino sign.

How exhilarating, how preternaturally fresh the latest work of these septuagenarian artists feels! Venturi is seventy-six, Gehry is seventy-two, and Scott Brown will turn seventy this year. Architecture has never been a young person's game. For rarely does the chance to build anything significant come before forty, or recognition outside the profession before fifty, or wide acclaim before sixty. With the creative confidence that comes only with time, and that makes even the most strenuous of efforts look easy, these very young old masters are anything but creatures of the museum. ■

# The Stifled Society

*By* CASS R. SUNSTEIN

## The Lost Art of Drawing the Line: How Fairness Went Too Far by Philip K. Howard

(Random House, 255 pp., $22.95)

IN *The Death of Common Sense*, which appeared in 1995, Philip K. Howard offered an attack on rigid legal rules and a plea for the exercise of human judgment. In many domains, Howard complained, the law prohibits people from responding sensibly to the particulars of a situation. In 1988, for example, Mother Teresa and the Missionaries of Charity agreed to convert two abandoned buildings into a homeless shelter; but New York City's building code requires an elevator in every renovated multiple-story building, and so the Missionaries were told, after two years of red tape and long discussions, that their promising project could not go forward because it did not comply with the regulations—even after they explained their order's religious beliefs, which prohibit the use of modern conveniences, including elevators. Mother Teresa ultimately gave up. No shelter was built.

In the same indignant vein, Howard pointed to regulatory obstacles to much-needed public toilets in New York, in the form of rules requiring every such toilet to be accessible to handicapped people; to the endless requirements for day-care centers, which have driven child care underground, where there are no regulatory protections at all; and to environmental regulations that ignore cost and waste resources on trivial problems. Offering many such examples, Howard portrayed a maddeningly bureaucratized legal system, the sort of thing to be found in a dystopian science-fiction novel.

Howard's argument received a great deal of sympathetic attention. He influenced the Clinton administration's "reinventing government" initiative, which attempted to focus attention on results and performance, and to allow people to find their own way to make workplaces safer or to clean the air. Howard also appeared to affect the thinking of prominent Republicans; Senator Dole took a great deal of interest in Howard's diagnosis of the problem. And it is a principal theme of the Bush administration—even at this early stage—to champion an increased flexibility to adapt to particular situations, which was one of Howard's major concerns. It is highly likely that the Bush administration's efforts at regulatory reform have been influenced, at least indirectly, by Howard's claims.

*The Death of Common Sense* was in many ways a fine book. Howard is an unusually vivid writer, and he is attractively nonpartisan. His arguments cut across the ordinary political divisions. He was undoubtedly correct to point to the pathologies of rule-pervaded law. In many contexts, things would be better if officials were allowed to exercise their own judgment, rather than facing the mindless constraints of rules. But Howard's book was also a bit of a lawyer's brief, a polemic. He made his case not with careful studies of government practice, but with memorable anecdotes, with a catalog of instances in which the constraints of rules seem truly ludicrous.

Arguments in this vein are much more convincing than they deserve to be. Using Howard's own method, it would not be difficult to produce a very different kind of book (called, say, *The Abuse of Common Sense*) whose point was to catalogue arbitrary exercises of discretion by those not constrained by clear rules. Such a book might point to capriciousness in the sentencing of criminals; to unfair discipline by high school teachers; to life-destroying blunders by administrators of welfare programs; to randomness in punitive damage awards from juries; to personnel offices that transfer people, and refuse to promote them, in a whimsical and sometimes discriminatory manner. Such a book could be every bit as powerful as the book that Howard chose to write. (In 1969, the law professor Kenneth Culp Davis actually produced an influential book in just this vein, called *Discretionary Justice*.)

Still, it is impossible to deny that Howard was pointing to a serious problem in modern institutions—and impossible also to deny that in many places, rule-bound behavior should be loosened, so as to enable people to consider the needs of



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particular situations. And even though Howard wrote with passion, *The Death of Common Sense* was also restrained, even quiet. Howard's new book has a harder edge, and in some places it is hectoring. This is a lawyer who really dislikes lawsuits. Howard's basic argument is that by surrounding employers, teachers, and managers with the constant threat of litigation, the legal system prevents them from having authority or exercising responsibility. In fact, Howard depicts a society so closely governed by law and litigation that it has, in a sense, gone mad.

Howard prominently states that he is the son of a Presbyterian minister, and it does not seem unfair to say that in his new book he offers a kind of sermon, with a quasi-Biblical account of a "fall" from community, mutual accommodations, and agreed-upon authority to courtrooms, adversariness, and insistence on rights. His argument is worthy of attention not because it is entirely convincing, but because he states, with unusual lucidity, a position that is widely and perhaps increasingly held. A proper understanding of the strengths and the weaknesses of that position might produce better thinking about the choice between rules and legal rights on the one hand and discretion on the other—and might therefore enable us to see, more clearly than before, the settings in which one or another choice makes sense.

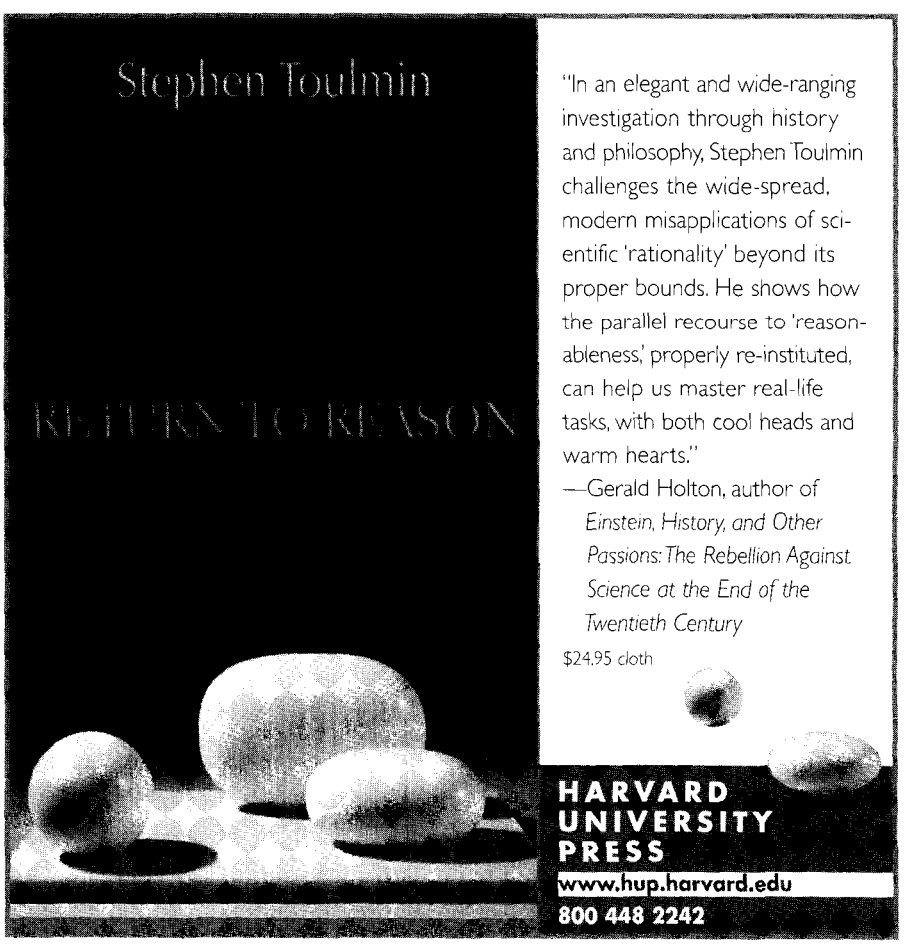
MANY OF HOWARD'S concerns can be found in his opening tale of a double slide in Oologah, Oklahoma. In 1995, a small child was injured while playing on a slide, and his parents sued the town. As a result, the town board auctioned off the slide for private use. Howard thinks that this case is emblematic: "all over America, playgrounds are being closed or stripped of standard equipment." The reason is the fear of lawsuits. Yet the destructive effects of legal rights are hardly limited to schoolyards. Three employees of the Seattle Police Department fell out of their swivel chairs, and were injured, and received disability benefits. As a result, Seattle now has straight chairs, and employees have to strain to speak with one another, and complain about cricks in their necks.

"Avoiding risk is now practically a religion," Howard asserts, and "the headlong pursuit of safety is killing off the simple pleasures of life." He believes that the real problem, the overlooked problem, involves not injuries but lawsuits. Since "Americans believe that fairness to individuals is the goal of justice," lawsuits are proliferating, and the fear of litigation is making it difficult for people to exercise authority in their jobs or anywhere else. As Howard depicts the situation, teachers are terrified of charges of sexual harassment, and so for their own protection they require video surveillance in music classes and art classes. Cafeterias must now be peanut-free, because a small number of visitors will be allergic to peanuts. For fear of legal action, guidance counselors are afraid to tell the truth about their students. In order to avoid malpractice suits, doctors turn crucial decisions over to families. In each of these cases, Howard thinks that the specter of law is preventing sensible human interactions.

Howard devotes a great deal of attention to the subject of education. His major claim is that good teachers should be given far more room to show their own initiative and creativity. He invokes the memory of his own ninth-grade English teacher, one Hillyer Rudisill, who would throw erasers at students who were caught daydreaming: "He'd probably be sued today, but we loved it." Howard says that for someone to be a good teacher, what matters is not that rules be followed, but that the instructor's "own spirit" be brought "into the classroom." As an unintended result of the omnipresence of rules and litigation, rigid educational bureaucracies have replaced individual spirits, thus depriving teachers of the chance to harness their own creativity for the benefit of students.

That is precisely what Howard wants to harness, and so he is greatly skeptical of national testing, which he sees as "the latest drill." The problem with this drill is that the test might well become "the main measure of success," thus turning elementary schools into "SAT review courses, with curiosity and discovery stripped out in favor of training for the answers." For this reason, Howard fears that testing reform will "become yet another symptom of the problem." What Howard seeks instead is "teachers and principals acting on their own instincts and judgments." Bureaucratic rules, and the risk of lawsuits, stand as major obstacles here. "Decisions like disciplining, grading, or even deciding who makes some club or team must comply with organized procedures and standards." The problem with the proceduralization of education is that it eliminates human judgment and human choice. The objective guideposts become ends in themselves; and compliance, rather than personal perception, is the order of the day. This leads to a situation in which "teachers, not surprisingly, are giving up."

For Howard, educational failure is part of a broader problem that is faced by institutions of many kinds. When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organizational directions become rigid and take on a life of their own, and when individuals are not permitted to make "sense of the situation," failure is inevitable. In the 1970s, Japanese businesses recognized this problem and attempted to take advantage of worker creativity in product assembly and design. Howard reports that American businesses similarly "rediscovered the human" in the 1980s, producing workplaces less bound by rules laid down in advance. Howard thinks that this was a terrific success. In his view, it is not power but powerlessness that corrupts, because it produces an absence of accountability, and because it leads people to follow the rules and to protect themselves from lawsuits, rather than to do what is right.

FOR HIS CHIEF example of a system that works, Howard returns to the subject of education and invokes Carmen Farina, a school principal in Manhattan. Apparently Farina's school has become one of the most sought after in New York City. The reason, Howard says, is that Farina has taken control of the school, and has not allowed herself to be hampered by rules and threats of litigation. More particularly, Farina has asserted the authority to get rid of bad teachers, and she has allowed good teachers to exercise their own creativity. Before Farina's stewardship, almost everything at the school was mandatory, and teachers did not meet or work together. Now meetings are voluntary, but frequent; and people are really cooperating.

Howard thinks that the reason for all this good news is that "there's someone who can make decisions." If things go wrong, Farina has the authority to set them right, and she is entirely willing to give her teachers the authority to take on new challenges. Howard finds a general lesson here: "In the few instances where government has reclaimed personal authority away from bureaucratic protocols, the liberating impact on the department has been almost immediate." As a case-in-chief, he cites the abolition of the civil service system in Georgia's Office of Planning and Budget in 1992. According to a former office head, the change dramatically improved performance.

Howard is aware that procedural safeguards, and the private right to sue, are often justified as a means of protecting the rights of individuals. In his view, however, the effort to guarantee fairness to every person has a range of unintended bad consequences. It can prevent important decisions from being made at all, as when employers refuse to discharge bad workers for fear of legal action. It can also harm people who must face bad teachers, or bad performance, while the procedures run their course. Indeed, Howard goes much further: "Due process, striving to ensure fairness to individuals, has a side effect when applied to cooperative activities like running schools: It basically kills the culture." The reason is that due process ensures that the "floor of acceptable behavior" will keep "dropping," simply in order to provide protection to those who insist on their rights. Instead of individual hearings, Howard seeks sensible judgments by those known to have the authority to make them. "Giving people authority, to choose and be chosen about, is the only way to release the human spirit."

HOWARD APPLIES THE same principles to the area of race relations, where he thinks that civil rights law is out of control, in large part because it has helped to bring about an adversarial relation between whites and blacks, who are filled with suspicion of each other. One of his central claims is that "people are walking on eggshells" as a result of the law. In his view, legal mechanisms designed "to protect individual African Americans against unfairness" have been "counterproductive, impeding black progress and racial healing." To support this charge, Howard points to social science evidence suggesting that when dealing with African Americans, the body language of whites shows "that they're not being candid and, indeed, are uncomfortable dealing with minorities." Issues of race are not discussed honestly, owing to the sensitivity of the subject. "Just mention a racial issue in mixed company, and all the oxygen drains out of the room, leaving whites shriveled up and helpless, and blacks seething with righteous indignation."

At first glance, all this seems to have little to do with law. But Howard believes that anti-discrimination law "sits squarely at the center of modern workplace relations," and that it has a significant effect on how people relate to each other, so that "a charge of racism hangs over black-white relations like a gun with a hair trigger." The result is that whites are full of guilt and fear, and are all too willing to engage in self-censorship, while minority group members know that whites are not being honest. And a prime source of this dishonesty is the simple threat of lawsuits: "The availability of the race card is genuinely terrifying to whites." This is not a benign terror. Howard thinks that it has adverse social consequences. Thus whites are reluctant to put blacks in high positions, for fear of a lawsuit if things do not work out. "It's hard to imagine a more powerful disincentive to black advancement than white apprehension about discrimination claims." Here as elsewhere, the risk of legal action has a range of unintended harmful effects.

To solve the problem, Howard offers a dramatic suggestion. He believes that individual citizens should be deprived of the power to bring civil rights actions. Instead, "the right to bring individual claims should be entrusted to an unbiased third party, such as government." Since a high percentage of individual claims "are too unreliable," private actions should be available only if they are brought by those complaining not of unfairness against individuals, but of "patterns" of discrimination against whole groups of people.

Howard closes with a discussion of "the secret to freedom." The current social "villain" consists of "an oppressive legal structure," one that scrutinizes "almost any individual choice or event that anyone cares to complain about." He thinks that law now "looms over daily choices, demanding proof by objective criteria." The solution is to eliminate this scrutiny and instead to rely on human judgment. Once legal constraints are removed, "people on the spot" will be given the authority to do "what they think is right." Rather than courtrooms and rules, Howard wants to encourage the free and open judgments of actual human beings. This is the secret to freedom, and Howard's plea for the future.

THERE IS SOME good sense here. In many contexts, the legal system is too cumbersome and confining, and the threat of lawsuits can indeed have unintended bad consequences. It is well known that many doctors practice "defensive medicine," not to help patients but to fend off the risk of litigation; and defensive medicine, of one or another sort, is hardly limited to physicians. In criticizing rule-pervaded decisions, Howard is actually making an old point, much emphasized by Aristotle, to the effect that good judgment is highly alert to the particulars of the situation. It was in this spirit that Aristotle invoked the Lesbian Ruler, which is not rigid and is able to bend with the individual shape that it is measuring. For Aristotle, as for Howard, this is how the best judges operate as well.

Everyone knows people who possess the elusive quality of wisdom—the ability to look at manifold details, to consider them all at once, and somehow to produce a good method for handling them. Rule-followers are impressive in many ways; but they are not likely to be wise, because their rules are too crude to fit the details of human situations. When teach-



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ers, employers, and managers are constantly thinking about lawsuits and the letter of the law, they may not be able to act wisely. On these counts Howard is saying something true and important.

Yet Howard's argument has two serious vices. His depiction of modern American life is greatly overstated. It seems odd to say that Americans are generally terrified of being sued. Where is the evidence? Moreover, Howard relies far too much on colorful anecdotes, and offers no systematic argument that what he likes, a system of "authority," would be better than a system surrounded by legally enforceable rules. Indeed, he shows no awareness that a systematic argument is even required. These two flaws have a common source: Howard's effort to make his case by means of vivid examples. On inspection, Howard's method turns out to be a bit too close to that of a Reagan-style stump speaker: he offers simple, memorable illustrations of social pathologies, and suggests that the examples by themselves establish what is broken and what must be done to fix it. None of this means that Howard is wrong. But it does mean that he has not established that he is right.

CONSIDER THE ISSUE of mandatory testing in the schools. Howard wants to allow good teachers to exercise their own creativity, and he fears that mandatory testing will ensure that classrooms are devoted not to learning but to preparation for tests. To be sure, a school filled with excellent teachers is likely to be better than a bureaucratized system in which students are turned into test-taking machines. (With the right definition of "excellent teachers," this is true pretty much by definition.) But is the point a sufficient argument against mandatory testing? Howard does provide some brief examples of schools that cheat, thus inflating the results; but he offers no systematic evidence that, in the real world, testing would do more harm than good. Of course testing could alter the educational experience for the worse; but this is no more than a possibility. It is also possible that testing would ensure greater classroom attention to basic skills in, say, reading and mathematics. Indeed, it is possible that creative teaching and mandatory testing could complement one another. Schools could authorize their teachers to use their creativity to see to it that their students learn. Among the things that students might learn are fundamental skills, which can then be tested.

To know whether we should rely on teacher discretion rather than on tests, we need to know whether the teachers whom we are likely to have will do better, in the aggregate, without mandatory tests than with them. In his very brief discussion of this large issue, Howard offers nothing to help answer that question. He seems to think that it is enough, for his purposes, to compare the best rule-free teachers with the worst-case scenario for mandatory testing. Worse still, he appears not to realize that any judgment about mandatory testing is one that ought to turn on a great deal of evidence.

The same difficulties pervade many of Howard's arguments. As a school principal, Carmen Farina does seem able to do better than she would if cabined by a series of rules and regulations. But it does not follow that American school systems would do better, all in all, if they reduced the constraints of rules and laws, and just asked their principals to try to do what Farina has done. When it is exercised well, authority is likely to be better than rule books, if only because wise people, armed with authority, can adjust to the particulars of their situation. But rule books, if they are good ones, are likely to be better than authority exercised poorly, if only because bad authorities can abuse their discretion, making decisions that are foolish or worse. In every context with which he deals, Howard seems to think that in choosing between authority and rules, it is sufficient to produce impressive examples of well-exercised authority and pathologically rule-bound law. But the important question involves the difference between the two alternatives as they operate, warts and all, in the real world.

To see the problem clearly, consider an instructive example not addressed in Howard's book. Under federal law, the Social Security Administration must decide whether Social Security claimants suffer from a disability. The governing law defines disability in a fairly vague and open-ended way, saying that people count as disabled if they are unable "to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment." For many years, administrative law judges exercised authority in Howard's preferred fashion—deciding, in individual cases, whether particular people qualified as disabled. The result? A big mess, as different judges used different criteria to decide whether people should qualify. Similarly situated people were not treated similarly, and decisions took a great deal of time.

In 1978, the Social Security Administration responded by reducing the authority of administrative law judges and creating a fairly mechanical "grid" in which the claimant's age, educational background, and residual physical capacity would be


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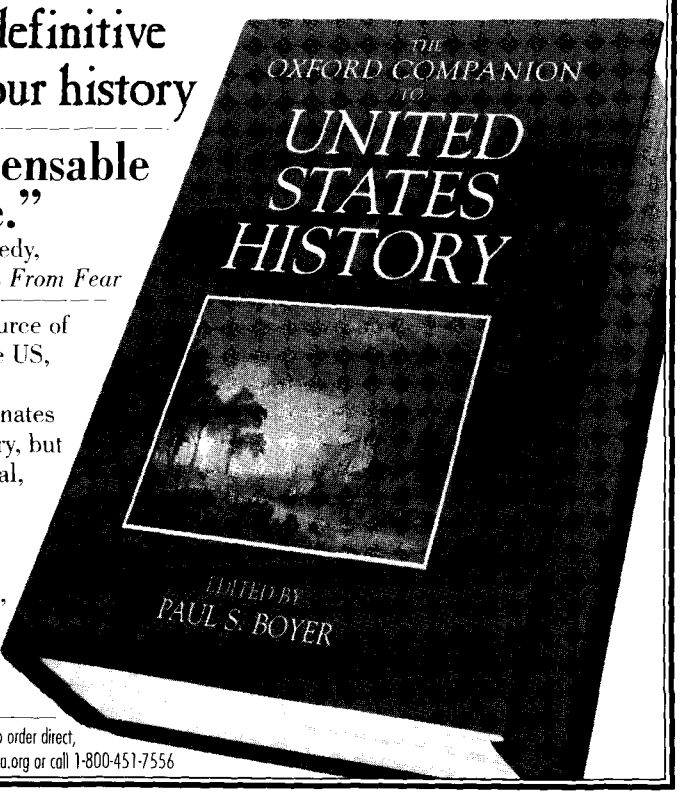


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used to decide who counted as disabled. Of course, some people complain that the "grid" is too rigid, and that things would be better if administrative law judges could exercise their discretion so as to come to terms with the particulars of the case. But informed observers think that the grid is much better than what preceded it, because it makes things much simpler, and ensures more in the way of equal treatment of the similarly situated, and prevents the arbitrary exercise of discretion. Rule-bound though it is, the grid system is both fairer and less time-consuming than what preceded it.

Howard does not sufficiently appreciate the possibility that "authority" will be worse than a system of rules. The choice between the two, or the appropriate mix of the two, depends on the context, and on our assessment of the possibility of producing decent rules, or of trusting people who exercise discretion. In the 1990s, Montana removed any numerical speed limit during the day and allowed police officers to give tickets to anyone who did not drive in a "reasonable and prudent" manner. Predictably enough, the absence of numerical limits created serious problems for law enforcement, and in 1998 the Montana Supreme Court ruled that the requirement of "reasonable and prudent" speed was too vague to be constitutional. Howard is plainly a sensible person, and I doubt that he really believes that, with respect to excessive speed on the highways, the discretionary authority of individual police officers is better than clear rules laid down in advance.

If he does believe this, it is not inconceivable that he is right. But any reasonable judgment must depend on actual practice: on whether a system of individual authority, without rules, affords sufficient predictability to drivers, and contains enough protection against the abusive exercise of discretion. In some contexts, a system of rules and rights is better than a system of discretion and authority, simply because it makes decisions simpler and easier, and because it reduces the total number of mistakes. Of course there are contexts in which we do better to authorize people to do what they think best. A rule-bound approach to imposing capital punishment would be too rigid to make sense. In making the comparison, we need to know which approach will produce more mistakes, and often the answer to that question will argue against "authority."

I HAVE BEEN emphasizing the choice between a system constrained by rules and procedures and a system in which people are enabled to do what they think best. This is one of Howard's major concerns, but he runs it together with a separate question, involving the unintended bad consequences of a promiscuous right to sue. We could think that rules and procedures are often best, while also thinking that lawsuits are too common and have many bad consequences. Howard's concerns here are hardly baseless, but he seems to me to overstate the problem. As he portrays the situation, anyone can sue anybody for anything, and countless Americans are terrified by the prospect of being sued. In doing what we do, our major motivation is to stay out of courtrooms. But he provides no facts and figures to show that this seemingly inflated description depicts reality.

For many schools, and for many employers, the prospect of a suit is at most a secondary consideration, and people do not generally arrange their affairs around the risk of litigation. Is it really true that schools are generally stripping or removing their playground equipment because people might sue? Howard offers no proof for such a claim. In any event, the fear of a lawsuit is not always or necessarily a bad thing. When people are afraid that they might be sued, they will avoid all sorts of harmful actions that they might otherwise contemplate. Theft and sexual harassment are less likely simply because those who engage in these practices can be held accountable in court. In some contexts, fairness has not gone nearly far enough, as people engage in objectionable behavior when they know that, practically speaking, they are not likely to be caught or punished. To know whether we should complain about litigation, we need to know about its aggregate effects. Despite many suggestive examples, Howard says too little here.

IN THE CONTEXT of race relations, Howard urges the abolition of individual causes of legal action. He wants to give the government a monopoly on civil rights actions (or perhaps—he is not clear on this point—to allow private actions only on behalf of large groups). To support this reform, however, it is not enough to point to cases in which the threat of litigation has had unfortunate effects. We need to know the magnitude of those effects, not just the fact of their existence. And we also need to know the magnitude of the beneficial effects of the individual right that Howard wants to eliminate.

The threat of litigation undoubtedly helps to deter discriminatory conduct; and when discrimination occurs, litigation can provide a corrective and a stern warning to others. For this reason, there are real dangers in any proposal to remove the right from individuals and to give it to public officials, who have limited resources and many things to worry over. If individuals are deprived of the right to sue for discrimination, there can be no doubt that more discrimination will occur. Is the increase justified by Howard's concerns about the unintended effects of the right to sue? Maybe. But Howard provides nothing that would enable us to answer the question with any confidence.

Howard also overstates the effects of law. He writes as if white people are constantly living by their nerves, and the reason is that they are afraid of lawsuits. But if white people are to some (limited) extent anxious, it is often owing to social pressures that have little to do with law. In some sectors, whites are fearful that they will be perceived as racist, and they silence themselves accordingly. There is nothing unusual about this. Political correctness, in one form or another, is omnipresent in human life; it can be found on the left, on the right, and everywhere in between. In most domains, people talk as they do partly because they do not want to offend others or to present themselves in an unattractive light. In many nations around the world, people will even show ethnic, religious, or racial prejudice not because they really are prejudiced, but because this is the socially preferred method of self-presentation. Since racism should be deplored, it is not altogether bad if social pressures are producing a degree of circumspection and even hypocrisy in some whites.

Of course, Howard is right to say that the civil rights laws are having some bad unintended consequences. Some employers are certainly reluctant to take a chance on some African Americans, for fear that if things do not work out they might find themselves in court. The point has received its strongest empirical confirmation in studies involving disabled people. The Americans With Disabilities Act has made employers reluctant to hire disabled people in the first place, because disabled people are perceived by many employers as lawsuits waiting to happen. But we cannot take this point, standing by itself, to be a sufficient argument for radical reform, or for believing that fairness has gone "too far." We need to know the extent of the adverse effects. And we need to compare the adverse effects against the beneficial consequences of anti-discrimination law, which include prevention, in many contexts, of discrimination that would otherwise occur.

Howard has written a nostalgic book. Some of what he presents has the feel of a celebration of the world of *The Brady Bunch*—a celebration of small towns and decisive leaders, of a time in which people were not surrounded by bureaucracies



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# Those "West Bank" Settlements

## Are they *really* the "greatest obstacle to peace"?

The Palestinians have once again erupted in bloody uprising, an uprising in which so far hundreds have been killed and thousands have been wounded. Even though the terms of a final settlement of the decades-old dispute between Israeli Jews and Palestinians were clearly spelled out in the Oslo Agreement, the Palestinians insist that the so-called "settlements" in Judea/Samaria (the "West Bank") should be dismantled or, at the very least, that not a single building may be added to them.

## What are the facts?

**A thumbnail history.** In order to gain perspective, some thumbnail history is in order. Large numbers of Jews have been living in these territories since biblical times—without interruption. Most of the Arabs living there are in fact relative newcomers. As the term "Palestine" is understood, it encompasses the entire area now covered by Israel including Judea/Samaria (the so-called "West Bank") and what is now the Kingdom of Jordan. It originally also included the Golan Heights. In 1922, totally contrary to the Mandate of the League of Nations, the British severed the entire area east of the Jordan River and gave it to the Hashemites as reward for their assistance in World War I. Thus, fully 75% of Palestine, all of which under the Mandate and under the terms of the Balfour Declaration was meant to be a home for the Jewish people, was lost for that purpose. Only the area west of the Jordan River was left for the Jewish homeland.

> "How can 200,000 Jews living among one million Arabs be an obstacle to peace? Over one million Arabs live in Israel...nobody considers *them* an obstacle to peace."

**The "West Bank" occupied by Jordan.** In 1947, after decades of strife between Arabs and Jews in the territories west of the Jordan River, the British had enough and relinquished the Mandate. The United Nations proposed a partition plan under which the country (west of the River) was to be divided into respective Arab and Jewish areas. Jerusalem was to be internationalized. The Jews accepted the plan; the Arabs refused it out of hand. In 1948, on the twice truncated territory allotted to them by the United Nations, the Jews declared their independence and the state of Israel was born. On the same day, six Arab armies invaded the newborn state. In what can only be described as an almost biblical miracle, the ragged and poorly armed Jews defeated the six Arab armies, though at staggering cost in lives. When an armistice was finally secured, however, TransJordan remained in possession of the "West Bank" and the eastern part of Jerusalem; Egypt retained the Gaza Strip. TransJordan promptly renamed itself Jordan.

**Israel recaptures the "West Bank" in Six-Day War.** Once they were in possession of the "West Bank" and eastern Jerusalem, the Jordanians immediately proceeded to expel all Jews from these territories and to make them "judenrein". They then proceeded systematically to desecrate most Jewish sacred places, cemeteries and houses of worship. No Jews, regardless of whether they were Israelis, Americans or citizens of any other country, were allowed into the "West Bank" or eastern Jerusalem, the locale of the Western Wall, the holiest site in Judaism. In 1967, Egyptian president Abdel Nasser, joined by the same array of Arab armies that had unsuccessfully tried to destroy Israel at its birth in 1948, launched another war against Israel. He promised that this time he would "drive the Jews into the sea" and into oblivion, once and for all. The Israelis pre-empted and defeated and utterly destroyed the combined Arab might in the Six-Day War, one of the greatest military victories in history. When the fog and dust of war finally settled, the Israelis had not only retained their national territory, but had *repossessed* the territories of Judea/Samaria (later called the "West Bank"), the eastern part of Jerusalem, the Gaza Strip, the Golan Heights and had totally occupied Egypt's vast Sinai Peninsula.

It is clear from this short history that Israel's claim to the "West Bank" is a strong one. By constant repetition, the world has come to think of these territories as "occupied Arab land". Over 200,000 Jews now live there. And why shouldn't they? Why should the Arab countries and the "West Bank" be the only places in the world where Jews cannot live? How can 200,000 Jews living among one million Arabs be "an obstacle to peace"? And why does absolutely nobody care about how many Arabs "settle" in the "West Bank"? The over one million Arabs who live in Israel are citizens, enjoy every civil right, and have nothing to fear from the Jews. Nobody considers them an "obstacle to peace".

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and courts, but were free to follow their own judgments about right and wrong. Suggesting that America suffers from legal terrorism, Howard contends that if we liberate ourselves from the constraints of the rules and the lawsuits, we will be able to recover our own creativity and even our freedom itself. Howard radiates decency, and his heart is in the right place, and about some things he is surely correct. The problem with his book is that it is not so much an argument as a mood. He compares authorities from heaven with laws from hell, without making a sufficient effort to explore, at the level of theory or practice, the factors that will lead to the right mix of rules and discretion in the actual human world. ■

# Fiddler on the Hoof

*By* JENNIFER HOMANS

## Dance With Demons: The Life of Jerome Robbins by Greg Lawrence

(Putnam, 622 pp., $32.95)

ONE AFTERNOON IN 1945, Jerome Robbins was standing on stage with his back to the orchestra, rehearsing a group of dancers. In his excitement, he gradually edged back towards the pit. The dancers sat in stony silence and watched. Nobody warned him, and when he fell nobody rushed to help him. This story catches some of the resentment—even the hatred—that was felt by many who worked with Robbins. His demanding, unrelenting, and viciously personal style of criticism was legendary. At a dinner party in 1986, a group of visiting Russian dancers was regaled with this and other appalling stories. They were aghast. Was Robbins really so mean? Why? Their hostess, a luminary of ballet and Broadway, did not miss a beat: "Because he is a short, bald Jew from New Jersey and he can't get over it." Among dancers, feelings about Robbins run high to this day.

To the rest of the world, of course, Robbins is better known for his work. His career spanned sixty years, from the late 1930s until his death in 1998. He worked on Broadway until 1964, choreographing and directing the original productions of *Call Me Madam*, *Peter Pan*, *West Side Story*, *Gypsy*, and *Fiddler on the Roof*, among many others. He is responsible for the best dance sequences in the film of *West Side Story* (he was fired mid-production for going over budget), and for the dances in *The King and I*, including the poignant "The Small House of Uncle Thomas." From 1949 to 1956, and then again from 1969 to 1993, he worked beside George Balanchine (and then beside Peter Martins, after Balanchine's death in 1983) at the New York City Ballet, where he choreographed more than fifty ballets, among them *Afternoon of a Faun*, *The Cage*, *The Concert*, and *Dances at a Gathering*. He was one of the great American choreographers of his generation, and of the twentieth century.

Greg Lawrence has written the first biography of Robbins. As the title suggests, Lawrence is interested in the "dark" side of Robbins's life, "the story that Robbins was unable to tell." Lawrence claims that he wants to explain the meanness and to understand the dances, and promises to take "the full measure of both the artist and the man." About the work he is merely dutiful. Ballets and shows are accounted for. But the demons are his real subject. In this book we are never far from the "short, bald Jew from New Jersey."

According to Lawrence, the demons that "haunted" poor Robbins were: Jewishness (the self-hating variety), homosexuality (closeted), perfectionism (torturous), politics (Robbins was a member of the Communist Party and named names in 1953), and Balanchine (in whose "shadow" Robbins struggled). These are the things, we are told, that drove Robbins's work and explain his abusive moodiness. It helps to know that this biography is unauthorized. Lawrence had no access to the trove of letters, journals, personal papers, and files (they fill a large room) that Robbins left after his death. Those documents remain under the control of the Robbins Rights Trust and a committee of close associates appointed by Robbins. At his behest, many of the materials will remain closed until 2011, though the trustees have some discretionary powers in this regard.

LAWRENCE APPEARS NOT to have enjoyed their blessing. His solution to this problem was to hit the streets. He has interviewed dozens of Robbins's friends and colleagues, though many are also conspicuously missing and probably declined to speak to him. Still, Lawrence has accumulated an impressive number of opinions and anecdotes from a wide range of people. For this we owe him thanks. Unfortunately, he simply dumps the interviews into his book, leaving the reader with a heap of conflicting stories, many of which radically undermine Lawrence's own assertions about Robbins's life. It turns out, for example, that although Robbins's politics offended many of his colleagues, most stuck with him. Many say that he pushed them to levels of performance that they never dreamed they might achieve; and even Zero Mostel, who hated Robbins virulently, came back for more. Others say that Robbins could be as generous, funny, and caring as he was exacting and tyrannical. They were genuinely fond of him.

Lawrence believes that Robbins's decision to be a friendly witness before the House Un-American Activities Committee in 1953 was the single most important event in his life. This may or may not be so, but Lawrence's account of that difficult moment borders on caricature. Does he really think that Robbins's testimony before HUAC constitutes a reliable and sufficient account of his own motives and actions? Until we have access to Robbins's personal papers, we simply will not know why he joined the Communist Party (he was a member from 1942 to 1947), or why he cooperated with the congressional investigators.

Lawrence drowns in guesswork, and he makes little effort to grasp or to explain the complexities of this period in American history. He sympathizes unquestioningly with the common view that those who cooperated with HUAC were bad, although he grudgingly concedes that "KGB sources" and "similar revelations appear to strengthen the cases against Alger Hiss and the Rosenbergs." He also relies a little too much on Victor Navasky, who is hardly a dispassionate or disinterested source, and he reproduces uncritically Navasky's highly partial account of the confusions and the calculations of that troubled time.

Politics aside, there is another explana-

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tion for Lawrence's inability to get a feel for Robbins. Lawrence subscribes to a self-help, gone-Oprah approach to emotional life. For him, the well-lived life is the well-confessed life. Sexuality, love, politics, art, religion: it all has to be "dealt with," "worked out," "faced up to," and above all divulged. This model would have rung hollow and false to Robbins, who was a profoundly private man. He never spoke publicly about his politics or his sexuality. His work, and his work alone, lay open to public scrutiny. Lawrence thinks that Robbins was "concealing," but maybe he was just living, as most of us do, with the people we love and care for, behind closed doors.

More importantly, it is far from clear that the events of Robbins's personal life had a simple or direct relationship to his work. That life and art might spring from different if commingled sources is not an idea that occurs to Lawrence, who charges into Robbins's work indiscriminately wielding his wooden psycho-categories. The result is embarrassing. Take *Fancy Free*, one of Robbins's earliest ballets, a charming, lighthearted portrayal of spirited, boyish American sailors trying to look savvy as they flirt with girls while on leave in New York City. With its brassy score by Leonard Bernstein, the piece was a huge hit and made Robbins a star overnight when it premiered in 1944. Robbins later said that he had been inspired by Paul Cadmus's painting *The Fleet's In* of 1934, but had taken the ballet in his own direction. For Lawrence, this remark about an artistic influence is psychological evasion. He suggests that Robbins's failure to take up the homosexual themes in Cadmus's painting "reflected his ongoing turmoil about his own sexual identity." Really? Says who?

Toward the end of his life, Robbins undertook a "very, very personal" theatrical work (he called it *The Poppa Piece*) that would draw on his own life experiences. When interviewed about it in 1981, however, he was careful to say that "it would be misleading to call it autobiographical—it would deal more with phantasmagorical reactions to developments in my world." The piece was never completed and never seen. Drawing from interviews with actors who participated in the original workshop, Lawrence concludes that Robbins was involved in a monumental act of psychological deception. He was "using his art to create a scapegoat [of his father], distorting the reality of HUAC and avoiding deeper conflicts in his psyche." Lawrence continues, "Curiously, for a man steeped in Freudian analysis, his picture all but ignored his mother...." Lawrence, by contrast, ignores everything else.

Jerome Wilson (after the president) Rabinowitz was born in New York City in 1918. His parents were both Russian Jews. His father fled a shtetl near Vilna, and his mother arrived from Minsk as a girl. In many ways, Robbins's youth followed a typical immigrant trajectory. In the 1920s the family sold their kosher deli on East 97th Street and settled in Weehawken, New Jersey, where his father and an uncle opened a corset factory in 1928. His parents were active in the Jewish community, and eager to give Jerry and his older sister Sonia an education in the arts. Sonia danced and joined the touring company of Irma Duncan (whose free-spirited style was a direct imitation of her famous adoptive mother, Isadora). Jerry studied music and was something of a prodigy, performing and composing on the piano by the age of four. He later recalled that he dutifully suffered his bar mitzvah "and said, 'that's it' to the whole business." Dance and music were to be his ticket out of his parents' world. When he was eighteen he refused a place in the corset factory and began to study dance seriously in New York.

Yet Robbins did not altogether abandon his parents' world. When he was six, his mother had taken him across the Atlantic to visit his father's birthplace. The trip made a deep impression. Many years later, when he choreographed and directed *Fiddler on the Roof*, the musical based on stories by Sholem Aleichem, he talked to the cast at length about the trip, and told the lyricist Sheldon Harnick that his goal was "to give those shtetls that had been wiped out in World War II, to give them another life onstage—for maybe twenty-five years." His own attachment to Sholem Aleichem's stories was clear. "I had to discover," he explained, "how the show was going to be different from something called, say, 'The Rise of the Goldbergs.' The difference was that fiddler, sawing away on the roof. In a very real sense, that fiddler is my own."

When Robbins came to New York in 1936, the lines that would later harden between ballet, modern dance, Broadway, and theater were only shadows. Robbins studied everything: "art dance" à la Graham and Wigman, flamenco, Oriental dance, composition (at the politically radical New Dance Group), acting (Stanislavsky style), and ballet. He performed on Broadway in the late 1930s alongside Jimmy Durante, Ray Bolger, and Jackie Gleason. He joined American Ballet Theater in 1940 and worked with Léonide Massine, Antony Tudor, and Agnes de Mille. He met Michel Fokine, who encouraged


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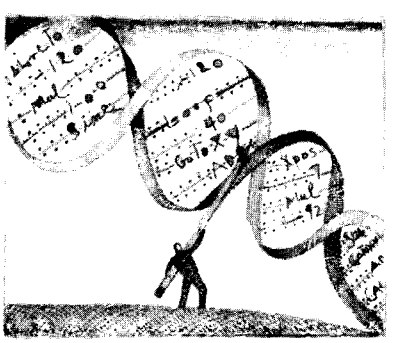

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the young dancer and coached him personally in *Petrouchka* and *Bluebeard*.

The point is not merely that Robbins absorbed an eclectic array of dance styles, but that he had sustained contact with the Russian modernism of Stanislavsky, Fokine, and other former Diaghilev dancers. (His first modern dance teacher, Senia Gluck-Sandor, had worked with Fokine and Adolph Bolm, and his ballet teacher Ella Daganova had danced with Pavlova.) It was not just a passing phase. Robbins had a lifelong fascination with Nijinsky, whose *Afternoon of a Faun* was the subject of one of his most haunting ballets. He tried for years to make a film based on Nijinsky's life, and (like Nijinsky) he was fascinated with Tolstoy. He would twice return to Stravinsky's *Les Noces*, which was first performed by the Diaghilev company, with choreography by Nijinska, in 1923.

Nor were the Russians a passing influence on the cultural life of New York City. In 1923 and 1924, Fokine, Mordkin, and Balanchine all left Russia. Fokine and Mordkin settled in New York, and would become important figures in the early years of American Ballet Theater. Also in 1923, Stanislavsky's Moscow Art Theater toured to New York and laid the foundations for a new, native theater. Balanchine arrived in 1933 and with Lincoln Kirstein founded the New York City Ballet in 1948. In 1924, Serge Koussevitsky arrived in Boston, where he nurtured a generation of young American composers and musicians. In 1940 Koussevitsky invited Aaron Copland to be artist-in-residence at the Berkshire Music Center in Tanglewood, and Copland encouraged the young Bernstein to come. Koussevitsky became an important mentor for the aspiring conductor. Modern American music, theater, and dance were in no small measure inspired by Russians. And this includes Robbins.

Fokine and Stanislavsky are particularly important in this regard. Both had argued for a realistic, natural theater that would eschew artifice in favor of a style so organic that it would seem (as Fokine said) to spring "from life itself." Fokine insisted that it was a choreographer's duty to invent a way of moving that was appropriate to a ballet's subject. Greeks should dance like Greeks, not like Petipa ballerinas in toga-like tutus. A ballet should not be tyrannized by a ballerina or a rigidly linear corps de ballet; it should be given over to individuals and groups, asymmetrically arranged. Similarly, Stanislavsky's actors did not declaim, but spoke in normal, even intimate tones. They did not "act," but searched their own pasts for personal emotional experiences to match those of their characters, thus producing a "real" feeling. Stanislavsky and Fokine both did extensive research for a performance, immersing themselves in the historical and cultural details of the worlds that they wished to reproduce.

In New York, Stanislavsky's ideas became the foundation of the distinctly American style of acting associated with Elia Kazan and Marlon Brando. Robbins was deeply involved in this world from the outset. His teacher Gluck-Sandor collaborated with the Group Theater and with Kazan. When Kazan and Cheryl Crawford went on to found the Actor's Studio in 1947, Marlon Brando and Montgomery Clift (Robbins's lover at the time) studied there. So did Robbins. Crawford was one of the original producers (before she chickened out) of *West Side Story*.

COURTESY PUTNAM

Jerome Robbins with George Chakiris and two other Sharks, rehearsing the movie "West Side Story"

Not surprisingly, then, Robbins's early work is marked by an intense preoccupation with style—with how movement grows from the ways people live and the things people believe. He, too, did voluminous research for his shows and created movement that seemed so "right" you hardly noticed that the characters were dancing. The most famous example, of course, is *West Side Story*, which opened in 1957. Robbins prowled around gang turf in New York's barrio and assaulted his cast with a barrage of newspaper articles and exposés of gang warfare. Jets and Sharks were forbidden to socialize offstage, and Robbins pitted them against each other by ruthlessly exposing personal, sometimes painful events from their private lives. (After hammering away at Michael Callan, who played Riff, Robbins finally cornered him and demanded: "Do you hate me?" "No sir," Callan responded. "Well," Robbins shot back, "before you go onstage tonight, I want you to think of something to hate.") He even organized workshops in which Jets and Sharks played Nazis and Jews in a concentration camp. It is no accident, I think, that Riff, the leader of the Jets, has something of the twisted, pent-up energy of the young Brando, or that Bernstein wrote the score for *On the Waterfront*.

*West Side Story* is conventionally regarded as the first truly integrated musical, in which dance, book, and music merged seamlessly. Robbins's dances are often regarded as the logical heir to Agnes de Mille's dances in *Oklahoma!* He seemed to have out-de Milled de Mille with his "vernacular" blend of ballet and jazz made into plot. But Robbins's real accomplishment in *West Side Story* has nothing to do with de Mille. Her talent was for taking a gesture (riding a horse) and elaborating it (witness those wide, second-position, holding-the-reins, giddyap-horsey moves in *Oklahoma!*). She was a born mimic, interested in external forms; and she cared little for the internal mechanisms of ballet or jazz. Her dances in *Oklahoma!* owe quite a lot to the days when cowboy extras whooped onto Uncle Cecil's movie sets and scooped up little Agnes for a ride. They are high kitsch.

But Robbins was up to something different. He knew how to split open a dance form (be it jazz, ballet, vaudeville, or Kabuki), how to extract its essence, and how to distort it to his own purpose. Even when Robbins did use narrative gesture, as in "Gee, Officer Krupke," it was the vaudeville-like rhythm, the speed and precision of the jousting that counted. "Krupke" is Marx Brothers verbal sparring set to music.



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*West Side Story* builds to "Cool," the controlled, imploding, "easy does it" dance of the Jets after Riff is killed. In this dance, Robbins uses the physical discipline of classical ballet to pull in, to restrain, to "cool" the raw, violent energy of the street. The Jets walk, prowl, run, and occasionally explode into a jump, a tour, or a pirouette. To move that fast, to go from walking to *tour en l'air* "like a pistol shot" (Robbins), is like accelerating from zero to sixty in a matter of seconds. The thrust required is enormous. The only way is to mass the energy inside, to concentrate it at the body's core, and then to release it out. Ballet trains the body to do this. "Cool" does not look like ballet because Robbins cuts movements short and pulls them sharply back to the low crouch of the street. A blasting jump is reined in before it reaches full height. This changes the entire character of the movement. The energy appears excessive, barely contained, grounded. Cool, not balletic.

FIVE YEARS BEFORE *West Side Story*, Robbins had used ballet to create one of the most violent and ugly dances of all time. *The Cage* is a twenty-five-minute orgy of savage female insects who stalk, kill, and feed on male intruders with explicit sexual pleasure. It is as relentless and driving as Stravinsky's score, and also as poignant. At the beginning of the ballet, a baby bug ("the novice") is born. She is initiated, and learns to walk, to move, and to murder in the way of the tribe. Robbins teaches us their language, which is not "bug-like" but based on movements of aggression and fear, woven into a small vocabulary of classical steps. Bodies clutch over in self-protection, eyes darting. Movements of throwing up, strangling, and feeding mesh with wide *échappés*, lunging arabesques, and hammering *bourrées*. The novice falls in love with an intruder. They dance a yearning *pas de deux*, a love song that strains to soften the bastardized, brutalized vocabulary. But finally instinct is stronger than love, and she ritually cuts his throat. Then she finishes him off by kicking and stomping, with the dead body (center stage) jolting and flailing under the force. The ballet ends with a frenzied group feeding and an orgasmic thigh-rubbing satisfaction.

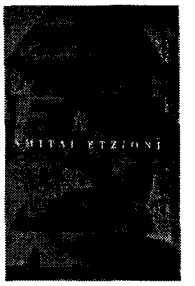
*The Cage* is one of Robbins's great ballets. When it opened in 1951, critics were appalled by its ferocity. (The Dutch government at first banned it as "pornographic.") Robbins was amused by the public response. "I don't see why some people are so shocked by *The Cage*," he quipped. "If you observe closely you must realize that it is actually not more than the second act of *Giselle* in a contemporary visualization." Classical ballet, with its soaring lyricism, knows no limits: it is a language of affirmation and human possibility, and Giselle continues to love until death. Robbins certainly used that language, but he cut it down, twisting and circumscribing its syntax. The novice can only yearn; she does not have the vocabulary to love, and we feel the lack intensely.

*The Cage* was followed by *Afternoon of a Faun* in 1953 and *The Concert* in 1956. In *Afternoon of a Faun*, Robbins took Nijinsky's highly stylized and sexually charged work of 1912, about a faun who tries to seduce a nymph, and transposed it into the demure, asexual language of ballet. The result is a revealing study of how classical style can diffuse and deflect strong feelings. *The Concert*, by contrast, is a series of hilarious vignettes about people who come to hear a concert in the park. Within minutes, we know each of these wacky, whimsical characters, and they carry us away on their escapades. They trip over chairs, hug pianos, sympathetically raise and lower umbrellas, all in a clumsy, endearing effort to be themselves and belong.

Both ballets were choreographed for the New York City Ballet, but they share more with *West Side Story* and *Fiddler on the Roof* than with the work that Robbins would later do for City Ballet. They are strong and interesting because, like *West Side Story*, they hit classical ballet at an angle, never head on. Indeed, Robbins did his best work from 1944 to 1964, when, like the fiddler, he was up there sawing away at traditions.

AFTER 1964, ROBBINS veered in a completely new direction. He left Broadway. He turned his back on stylized ballets such as *The Cage*, *Afternoon of a Faun*, and *The Concert* and threw in his lot with Balanchine and the New York City Ballet, where he would work for the next thirty years. What had changed? Robbins said that he was tired of commercially driven collaborations. He wanted to work with classical music and trained dancers, on his own terms. No doubt. But a more interesting and convincing explanation can be found in *Dances at a Gathering*, choreographed in 1969 to music by Chopin.

*Dances at a Gathering* is about young men and women who come and go, join and part, dance and hold hands, in a lush, nostalgia-tinged atmosphere. It says: we will be lovely, clear, natural, and in love. We are ourselves, but we are also together, a group or a community of sorts. Robbins described the piece as his rejection of the Judson Church avant-garde dance scene: "What's the matter with connecting, what's the matter with love, what's the matter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with celebrating positive things? Why—I asked myself—does everything have to be so separated and alienated; so that there is this almost constant push to disconnect?" Broadway, though uninterested in such high-minded questions, was nonetheless in a similar state of dissolution, trapped between the hard sexual cynicism of Bob Fosse and the me-generation indulgence of *Hair* and *Jesus Christ Superstar*. The pure lyric faith of Robbins's *Dances at a Gathering* stood in stark contrast.

*Dances* is so "right" as a ballet that one hardly notices its achievement. The dancers are ordinary people—not peasants, aristocrats, or ballet characters of any recognizable kind. They are slightly self-conscious, and seem to be turning their steps over in their minds as they move. Some critics have taken this to be an annoying pretense, but it has the effect of bringing the audience close up, in a quiet and confiding way. We are drawn in, not to any particular drama but to the details of the movement, which is fine, smooth, and lyrical. The movement appears simple (even when it is not), rudimentary, essential. There are even moments when it feels a bit too intimate. When the first solo (originally danced by Edward Villella) begins, I always have the impulse to leave, as if I were about to eavesdrop on a private conversation. There is nothing of the grand phrasing of Petipa, and also nothing of Balanchine. In *Dances at a Gathering*, Robbins whittled the elevated, deeply aristocratic poetry of ballet into a simple, intimate prose.

In retrospect, however, *Dances at a Gathering* also signaled a danger. Robbins was becoming increasingly interested in the internal worlds that could be revealed by distilling classical forms. *Watermill* (1972), seemingly so different from *Dances at a Gathering* with its slow, eastern, lost-in-time motif, was really just an extreme version of the same impulse. Robbins cast the athletic Villella, a paragon of energy, virtuosity, and abandon, as a man caught in a memory trance. For an entire hour, the macho stallion of the New York City Ballet barely moved.

Robbins's fascination for unvarnished movement had led him to an excruciating dead end. Nothing was left but stillness and theatrical effect. He never did that again. (He was not Robert Wilson.) Instead he went back to the more generous model of *Dances at a Gathering* and started over. And over. He went on to make many ballets—too many ballets—that looked like *Dances at a Gathering*: *In the Night* (1970), *The Goldberg Variations* (1971), *Other Dances* (1976), *Opus 19/The Dreamer* (1979), *A Suite of Dances* (1980), *Antique Epigraphs* (1984), and *Brandenburg* (1997).

*A Suite of Dances* is illustrative. It began in 1974 as a new Robbins-Bernstein collaboration. At first the idea of working together again seemed natural. They had done some of their best work together (*Fancy Free*, *On the Town*, *Facsimile*, *Age of Anxiety*, *West Side Story*), and both men had since left Broadway for classical venues. Bernstein was flush from his gigantic *Mass* (rock band, brass band, and full orchestra in the pit) in 1971, and from the Charles Eliot Norton Lectures ("I'm no longer quite sure what the question is, but I do know that the answer is yes") in 1973. This time they worked together at the New York City Ballet on a ballet based on Ansky's Yiddish drama *The Dybbuk*. Bernstein composed a big (too big) score. After the premiere in 1974, Robbins was still unhappy with his choreography, and set about reducing, cutting, and stripping away all hints of the drama that had inspired the collaboration in the first place. In 1980 he re-named the piece *A Suite of Dances* and left it.

Was he lost? Many have said so. They argue that Robbins bowed to Balanchine's genius, tried to imitate his "abstraction," and never stood straight, tall, and "dramatic" again—that he stopped being Robbins and became a second-rate Balanchine instead. But this opposition between

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"abstract" ballet and "dramatic" ballet (so bandied about these days) is troublesome. It is a lazy way of thinking about structure. Would we be content to describe Berlioz as merely a second-rate Beethoven? It is true that Robbins's ballets were increasingly plotless; but it hardly follows that they therefore resembled Balanchine's.

Indeed, they could not have been more different. Balanchine was famous for changing steps in his ballets to suit the needs of his dancers. His dancers, in turn, were famous for embroidering, embellishing, and playing with the steps that he gave them. Not so with Robbins, who was notoriously rigid. Every step was a crucial piece in the whole, and he would become enraged when even a hop or a skip was missed or out of place. He created multiple "versions" (A, B, C, . . . ) and then frantically changed his mind at the last second, hissing to the dancers as the orchestra tuned, "Change to version C, version C!"

THESE DIFFERENCES ARE marks of more than personal style. When the curtain went up on a Balanchine ballet, one did not "see a ballet"; one witnessed a group of dancers making their way through a living, shifting labyrinth of split-second choices, calculations, mistakes, regrets, adjustments, and consequences. It was alive and unpredictable. The rehearsal was for learning the pattern and knowing the limits; but when the curtain rose it was up to the dancer to take on the complexities of the ballet. Some dancers made more interesting guides than others, which is why "who was dancing" mattered terribly. Balanchine created ballets for dancers to live in, and when everything worked, they ran free. Before he died, he gave his ballets away like flowers.

Robbins's ballets (especially *Dances at a Gathering* and its progeny) are tightly wrought, diamond-cut, and polished: beautifully crafted worlds under glass. The best Robbins dancers are precise, evocative, and lyrical, like Patty McBride and Edward Villella, like Bart Cook, Kyra Nichols, and Stephanie Saland. They find drama in restraint, in care, in self-awareness. Even Robbins's sophisticated musicality is smooth as marble. Spontaneity has little place. His ballets are rituals, which derive their power from deliberation and planning. Robbins was notorious for demanding long rehearsal periods to perfect every last move. Before he died, he systematically filmed the better part of his oeuvre, as if to pre-empt the imprecise memories of dancers. Every step counted.

In an evening of Balanchine, Robbins ballets can seem beautiful but boring. His accomplishments at City Ballet were genuine: with *Dances at a Gathering* he made ballet—real, aristocratic, Russian ballet—look as informal and natural as a stroll down Broadway. His constructions are perfection. But over time, Robbins's easy movement style and seamless choreography became merely mesmerizing. There wasn't enough texture, grit, life. For all its loveliness, the more I saw of Robbins's work in the 1980s, the more familiar and predictable it seemed.

Robbins knew, I think, that he had hit a dead end. In his last years he made a series of ballets that reached out once again to popular culture and contemporary composers: *Glass Pieces* (to music by Philip Glass), *I'm Old Fashioned* (a tribute to Astaire), *Brahms/Handel* (with Twyla Tharp), *Eight Lines* (to music by Steve Reich). These harked back to the "old" Robbins, the Robbins who sawed away at traditional forms. None of these pieces really worked, not least because Glass and Reich are emphatically not Bernstein, and Astaire was not the Marx Brothers. But then Robbins was not the same either. If the answer in *Dances at a Gathering* had been "yes," it was now a confused "maybe." He had even lost his sense of humor. (The "bumps" in *I'm Old Fashioned* are too starched to be charming.)

In 1998, Robbins came full circle. With a sense of great urgency—he was eighty years old—he returned to a ballet that he had first done in 1965, *Les Noces*. He was not in good health. His hearing and his balance were bad, his short-term memory faltering. He was weak, but he insisted on mounting the ballet personally. With its relentlessly driving score, a dissonant confusion of religious and folk motifs, *Les Noces* is about a Russian peasant wedding. The occasion is not joyous. The young bride and groom are literally pushed forward by the group, pulled away from mother and father, and caught up in the relentless social ritual that is their marriage. It is not Robbins's best work, but it has moments (for instance, the boys' dance) of real power. The fact that he returned to it strikes me as significant. He was looking back—to Russia, and Stravinsky, and Nijinska; to a world and a heritage that had receded too far. He collapsed the day after the opening. Two months later he died.

At the New York City Ballet today, Balanchine's ballets are ghost towns. I recently saw a *Divertimento No. 15* that was a bare, empty structure that terrified the dancers, who gingerly made their way, fearful of every last pirouette. Only those who worked with Balanchine seem to have a taste for his freedoms. But *The Cage*, *The Concert*, or *Dances at a Gathering*? The dancers relax their tense, worried faces and the performance begins to thaw. Perhaps they are getting better coaching in Robbins's work, but I think that their success is owed to the ballets, too. Robbins sewed the instructions into the lining.

Jerome Robbins did for American dance what Elia Kazan did for theater and Leonard Bernstein for music. He did not create an American vernacular, as is sometimes said, but something much more interesting: a distinctive capacity to exaggerate and to distort, to invert and to re-invigorate across a panoply of styles and genres. He had a voracious appetite for experimentation. Only when he settled into a single tradition did Robbins falter. After *Dances at a Gathering*, his ballets offered only the narrowest window onto his talent, but at his peak he was without peer. No doubt he could be mean, but mean is a small price to pay for "Cool." ■

# CORRESPONDENCE

*continued from page 6*

context, it seems perfectly appropriate to ask what Bush has accomplished to warrant special treatment. Finally, the statement by the Yale faculty was signed by 208 members, not 171, as reported by TNR, and it was endorsed by many of the university's most distinguished scholars.

BRUCE ACKERMAN
*Sterling Professor of Law and Political Science*
*Yale University*
*New Haven, Connecticut*

## Guilted

TO THE EDITORS:

In response to Adam Michnik and Leon Wieseltier's "An Exchange" in the June 4 issue: The guilt that we share for crimes against humanity is a collective one, not fundamentally Polish, German, Japanese, Hutu, or Serb. There are many awful crimes against humanity in history, those against the Jews in World War II among the worst of them. Dwelling too much on ethnicity, history endlessly confirms, perpetuates, and renews interethnic hatred, leading to further race wars and genocides. Blame is a dialectical perpetual-motion machine, and too much vicarious guilt applied to whole ethnicities for the crimes of the past is a path to crimes of the future.

LYNN CHU
*New York, New York*



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# LONDON DIARIST

## Yob Story

IT SAYS SOMETHING ABOUT Britain, or about British politics, or maybe just about the joylessness of Labour's first term in power, that Tony Blair's finest hour as prime minister came at about this time last year, after his son Euan was arrested for underage drinking. Sixteen-year-old Euan, you may recall, celebrated the end of exams by getting sloshed and passing out in London's Leicester Square, the malodorous record of his transgressions deposited next to him on the pavement. When he came to, Euan gave the cops a fake name and said he was 18. The next day Blair appeared on the BBC's "Question Time" and shocked the audience by candidly, graciously discussing his son's behavior. He made none of the expected, petulant pleas for everyone to leave his family alone; instead, he said Euan should "suffer the penalty of the law." (Police gave Euan a reprimand, the weakest penalty he could have received.) After the show, in an act so authentic it must have been scripted, the beleaguered prime minister had his motorcade stop at a country pub, where he ordered a pint.

BRITONS ARE RECALLING THAT WEEK with particular fondness right now, in part because a second carefully rehearsed Labour term is likely to produce even fewer moments of genuine humanity than the first did. And in part because, as news of the Bush daughters' underage carousing has arrived from the States, the Euan affair offers a self-satisfying contrast, another demonstration that the Brits have a more mature, good-humored relationship with drink—Blair has since called Euan's escapade "hilarious"—than their colonial cousins. *The Economist* denounced "America's absurd insistence that people cannot drink until the age of 21" and warned that "puritanism seems to be trumping freedom." Some even accused stiff drinking laws of turning America into a nation of adolescents. "Adulthood," the American correspondent Mark Steyn wrote in *The Sunday Telegraph*, "is so deferred that many Americans exist in a state of perpetual childhood," quaffing sugary Mountain Dews and becoming "bloated lardbutts." Indeed. What a svelte, sophisticated people we Yanks would be if only our teenagers were free to chug lager.

DRINKING, TO BE SURE, IS ONE OF the great pastimes of British life, and one of its singular charms. Bowling leagues have nothing on neighborhood pubs as custodians of social capital. (Few people, after all, like drinking alone.) Yet the regularity, the pace, and the scale of alcohol consumption here rarely ceases to astound even those outsiders—at least, those Americans—who try to keep up. By about the fifth pint on a Sunday afternoon, the air thick with cigarette smoke and conversation rising to a deafening din, it all becomes a little nauseating, if not downright scary. The English are among the world's most prodigious drinkers, and they are almost surely the world's worst drunks. Hooliganism is no longer the preserve of working-class soccer fans; thanks to the late-'90s economic boom and the Labour government's friendliness to business, London professionals have more disposable income than ever before to waste on getting wasted.

IT'S GOTTEN BAD ENOUGH THAT, OF late, some have even mustered the temerity to express concern, if not mild disgust, at this national proclivity for inebriation—and the public pissing, vomiting, lechery, and vandalism it spawns. "Britain," former London *Times* editor Simon Jenkins recently wrote, "boasts it is more mature about alcohol.... [Yet] street drunkenness is little short of a national disease." In an essay published last month in the opinion journal *Prospect*, Michael Elliott lamented the rise of "Rude Britannia," a society in which "much public behavior has become astonishingly coarse—a place where aggression, vulgarity and drunkenness are commonplace.... [T]here is no other country whose people, when they get together abroad, are so well-known for vomit and violence—not the Germans or French, not the Americans, not the Swedes." The trouble, Elliott argues, is that "there seems little support for a substantive policy response to anti-social behavior."

THAT'S NOT QUITE TRUE. A RECENT piece of legislation did aim to curtail post-pub yobbishness. But, perhaps unsurprisingly, it assumed that the best way to curb excessive drinking was to allow *more* drinking. Just before kicking off its reelection campaign, the government announced plans to overhaul the country's maddening, antiquated requirement that liquor stores close and pubs stop serving at eleven o'clock at night. The new law would have done away with restrictions altogether; once it went into effect next year, a pub, with permission from local authorities, could have remained open all night. Few New Labour proposals commanded broader support on election night. In theory, the extension of the drinking day would have meant fewer drunks pouring out of pubs at the same time, shorter lines at after-hours clubs, and more available taxis. The government said looser licensing would also improve public safety, to say nothing of public health. The chairman of the government's Better Regulation Task Force, Lord Christopher Haskins, has argued that the current danger of "people drinking up very rapidly in the last half hour before closing time" would be alleviated once people "have leisure to make their own decisions."

I DOUBT IT. CHORTLE AS THEY MIGHT about America's nanny state, the British are mired far deeper in permanent adolescence. No doubt owing to the early closing time, a good number of Brits drink beer at the pub the way Americans drink at the Deke house on Friday nights. But, in America, the frat-house technique is favored mostly by people young enough to, well, live in frat houses; a visit to any London pub reveals that Britons continue drinking that way well into middle age. Round-the-clock pubs might nudge Britain toward adulthood, but childish habits take years, even decades, to shake. Scotland began liberalizing its laws in 1976, ultimately allowing most bars to stay open into the early morning. Yet alcohol-related deaths have more than doubled in the last decade, and one-third of Scottish men still exceed the government's recommended maximum intake of ten pints per week.

INTERESTINGLY, SUPPORTERS OF LIBeralized drinking laws also tend to support Britain's integration into Europe: Looser licensing, they believe, will bring Britain in line with practices on the Continent, making the country freer, livelier, more modern. But drinking laws that are more European could just as easily make Britain more vulgar, unpleasant, and obnoxious—at exactly the time Blair will be trying to sell Britons on the virtues of harmonizing policies with the rest of Europe, in order to win a likely referendum on British acceptance of Europe's common currency. Maybe that's why, last week, with the election safely over, Blair abruptly shelved the 24-hour drinking proposal. Or maybe it was because next year, Euan turns 18.

ROMESH RATNESAR

ROMESH RATNESAR is a staff writer at *Time*.



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